

Council Communication

Department: Community Development Case No. PC-08-003 Applicant: Metro Crossing, LP c/o Kimco Developer's Inc. ATTN: Scott Nierman 1111 Burlington Ave, Suite 113 Lisle, IL 60532	Resolution No. <u>08-228</u>	City Council: July 28, 2008 Planning Commission: July 8, 2008
Subject/Title Amend the development plan for Metro Crossing Subdivision by adopting a development plan for Lots 16 and 17. Amendments to development plans are approved by City Council resolution after public hearing and recommendation by the Planning Commission.		
Background & Discussion The applicant has requested an amendment to the approved development plan for Metro Crossing Subdivision. The development plan was adopted by Resolution No. 06-229, on August 28, 2006 and was amended by Resolution Nos. 07-25, 07-91 and 07-331, on January 8, 2005, February 26, 2007 and August 13, 2007, respectively. Site Development: The final plat for Metro Crossing included a dedicated public sanitary sewer easement at the common lot line of Lots 16 and 17. The sanitary sewer line was installed outside of the recorded easement. As such, it is necessary to release the currently recorded easement and establish a new easement for the public sewer. Similarly, at the time of platting the layout of the two lots was unknown. Although a storm water detention/water feature was anticipated for the area, the details were not available at the time. As such, a blanket storm water easement was recorded over the entirety of Lot 17. The blanket easement prevents the construction of any buildings on the site. At this time, the basin location is known and a description of the area and pipes are included. The blanket easement needs to be released and a metes and bounds easement description established for the conveyance of water. The City will not accept dedication of the storm water detention pond. The following must be completed prior to the issuance of any permit(s) within the proposed development plan: 1) preparation of an easement exhibit which releases the currently recorded sanitary and storm sewer easements discussed above, 2) preparation of an easement exhibit which establishes the new public sanitary sewer, 3) preparation of an easement exhibit which establishes the defined storm water easement and assigns maintenance to the developer and/or his/her assigns. The developer shall work with the Public Works Department to prepare the appropriately formed documents. Following receipt of the appropriate documents to staff, the process to set public hearing on the next available City council meeting shall be initiated. Additional site development comments are as follows: a) Minimum setback requirements for all structures shall be: Front: 20 feet; Rear: 15 feet; Interior side: 10 feet; Street side: 15 feet. b) For the purposes of determining minimum setbacks Metro Drive shall be considered the front property line, Denmark Drive shall be considered the rear property line, McDermott Street shall be considered a street side yard. c) The maximum height of any building, structure or decorative feature shall be three stories or 45 feet.		

- d) All trash receptacles shall be enclosed on three sides and screened from public view with materials similar to those of the primary building. The enclosure shall have a lockable gate which when closed completely eliminates the dumpster. It appears the dumpster location for Lot 17 is shown adjacent to Denmark Drive. The detail of the enclosure is not shown and shall be included on any permit application submittal. The landscaping berm adjacent shall be shifted to the west to help conceal or partially mask the view of the enclosure from the right-of-way.
- e) All loading areas shall be screened from public view including all rights-of-way by a combination of complementary architectural treatments and/or landscaping which after 3 years shall significantly screen the loading area from view.
- f) The placement of Lots 16 and 17 is such that the buildings will be viewable from all directions from rights-of-way located within the development. Details of the structures must take into account that there is no 'true' rear façade. As such all service entrees shall be enhanced with awnings, or other decorative features. Such features may be allowed on the façade of a building and must be at least 8 feet above the traveled pedestrian way and may not project over drive aisles or parking areas.
- g) Buildings exteriors shall be made of 100% masonry materials such as brick, split faced block (with a texture), Concrete Masonry Units (CMU) or EFIS materials. Metal shall only be allowed as an architectural accent. 20% of the building's front façade shall be made of brick. Flat face block and vinyl siding is not allowed. For the purpose of determining the front façade of the 'Shops B' the south elevation shall be used. The north elevation is also highly visible and shall also include a 10% brick requirement. The remaining building elevations for the 'Shops B' are acceptable.
- h) Building details for the 'Shops A' and 'Retail J' have not been submitted but shall be considered in much the same way. The façade of 'Shops A' facing Metro Drive shall be considered the front. The northerly elevation of 'Retail J' is presumed to be the front. Similar to Lot 17, the southerly and easterly elevations shall have a 10% brick requirement in addition to the other requirements. If the building layout for Lot 16 changes significantly staff shall be permitted to evaluate the building facades to ensure that appropriate building materials are used.
- i) All equipment placed on roofs shall be screened with architectural features from the public view.
- j) No more than 40% of any lot shall be covered with structures.
- k) Outside storage is not allowed. This includes the temporary and or permanent placement of inter-modal storage containers.
- l) Fire hydrants and driving surfaces are required in accordance with the requirements of the Fire Marshal's Office.
- m) All utilities, including electrical lines and services shall be underground. No above ground utilities lines shall be allowed.
- n) Improvements must be designed to avoid conflict with Council Bluffs Water Works facilities located with the adjacent rights-of-way. In accordance with the main extension agreement all fees current at the time of service request will be applicable. Fees consist of capital facility charges, tap fees, connection fees and charges for construction water.
- o) Public Works Department strongly recommends that the applicant provide information demonstrating that adequate freeboard, 2.5 ft or higher, as a factor of safety is provided for all horizontal and vertical improvements. The April 2007 drainage report identifies 978.33 feet as the water feature surface elevation during a high water event.
- p) Details of the aeration rate/style system within the water feature are unknown. Depending on the type of aeration armoring of the pond bottom around the improvements may be necessary.

Pedestrian ways:

- a) Each lot shall have an identified pedestrian way extending from the primary entrance area of each building to the sidewalk located within the public right-of-way. The pedestrian way may be designated with pavement striping, or change in paving material or some other alternative approved by the Director of the Community Development Department or his assign. It is encouraged that the pedestrian connection be incorporated into the overall layout of each lot and that it may be complementary to the

landscaping on each site. The site layout appears to meet this requirement. More detail will be required for Lot 16 at the time of permitting.

Landscaping :

- a) A landscaping plan has been submitted by the developer. The landscaping details adjacent to the public rights-of-way are consistent with the requirements for the originally approved development plan and are acceptable. A medium height/size growing tree shall be planted on both sides of the street within the City right-of-way, 40 feet on center.
- b) Landscaping is required on each private lot. In addition to the landscaping strip adjacent to the street, not less than 10% of the total lot area shall be landscaped with trees, shrubs and other plant material. All parking lot islands included in the site design greater than 20' x 12' shall be planted with trees and vegetation.
- c) A minimum of one tree shall be planted on each lot for every 10 parking spaces located on the lot. The landscaping plan as submitted appears to meet the requirement.
- d) At least 4 square feet of landscaping per each lineal foot of building frontage shall be installed between the building front and interior drive.
- e) Landscaping shall not interfere with the sight clearance triangle at any un-signalized intersection and shall not impede vision of any automobile at the street, driveway or pedestrian way. Plant material shall be complementary to that proposed for the landscaping strip adjacent to the right of way.
- f) A landscaping plan shall be a part of every building permit application. The plan shall clearly identify plant materials, quantity, and size and shall show dimensions for all areas to be landscaped. All landscaping shall be appropriately maintained and dead plant material replaced at a time appropriate to planting seasons but in all cases shall be replaced within one year.
- g) All landscaped areas including grass and sod areas shall be irrigated. An irrigation plan shall be included as part of the landscaping plan with all permit applications.
- h) All parking lots shall have a strip five feet in width planted with grass or landscaped with plant materials along the side and rear property lines, the requirement can be waived if two parking lots adjoin, however the net amount of green space required for each adjoining lot shall be incorporated into other areas on the shared parking lots. The 5 foot strips may be included in the 10% requirement.
- i) Not more than 10% of the landscaped area shall be of inorganic materials such as brick, stone, aggregate, metal or artificial turf. Organic mulch may be used around trees and/or shrubs.

Signs:

- a) Three multi-tenant monument signs are proposed at the intersection of the public street rights-of-way. The total sign height will be limited to 10 feet; total width is 16'9" (as shown). The total sign area per face is less than the 100 square feet allowed in the development. Only tenants located within Lots 16 and 17 shall be allowed on the sign(s). Placement of the monument signs must not encroach within the site triangle at any intersection. Additional detached signs will not be allowed.
- b) Attached signage for each building shall be allowed at a rate of 15% of the building front façade (as determined in the above report); however the signage may be placed on any elevation of the building, front, rear of side.

Parking:

- a) The minimum number of parking spaces shall be as determined by Chapter 15.23 Off Street Parking, Loading and Unloading. In cases where several uses occupy a structure or parcel of land the total requirement for off street parking shall be the sum of the requirement of the different uses. The amount of parking will be based on the use of each lot.
- b) The developer shall be responsible to develop cross access and ingress/egress easements necessary to accommodate shared parking and driveways.
- c) Each request for a building permit will include a parking lot plan showing the number, location and dimension of all drive aisles and spaces, pedestrian ways, islands, landscaped areas, loading areas and lighting.

d) All parking lots are also subject to compliance with the Parking for Persons with Disabilities chapter of the Iowa Administrative Code.

Parking lot lighting:

a) A lighting plan will show placement, fixture height and design. Lighting consistent with that installed in the developed portion of the subdivision shall be installed. All lighting on private lots shall be painted or finished aluminum or steel. Wood poles will not be allowed. The maximum height shall not exceed 40 feet.

Recommendation

The Community Development Department recommends adoption of the amendment to the development plan for Lots 16 and 17, Metro Crossing Subdivision subject to the comments above, including the requirement that the easement exhibits discussed above are completed and recorded prior to the issuance of any permit.

Public Hearing

Leo Martin, representing the applicant, appeared before the Planning Commission in favor of the request. No one appeared in opposition to the request

Planning Commission Recommendation

The Planning Commission recommends adopting the Development Plan for Lots 16 and 17, Metro Crossing Subdivision, subject to the comments in the staff report, including the requirement that the easement exhibits as discussed are completed and recorded prior to the issuance of any permit on these lots.

VOTE: AYE 11 NAY 0 ABSTAIN 0 ABSENT 0 VACANT 0 Motion: Carried

Attachments

A: Development Plan, including monument sign detail

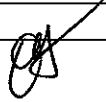
B: Detention basin/wall section

C: Detention basin/water feature Options

D: Bench, refuse container, bicycle parking examples

Applicant Engineer: Schemmer Associates, Randal Fehl
928 Valley View Drive, Suite 12
Council Bluffs, IA 51503

Prepared by: Rose E. Brown, Urban Planner, Community Development Department



RESOLUTION NO. 08-228

A RESOLUTION to amend the approved Planned Commercial Development Plan for Metro Crossing Subdivision, by adopting a development plan for Lots 16 and 17.

WHEREAS, Metro Crossing, LP, has requested an amendment to the approved Planned Commercial Development Plan for Metro Crossing Subdivision; and

WHEREAS, the development plan was approved by Resolution No. 06-229 on August 28, 2006, and was previously amended by Resolution No. 07-25, 07-91, and 07-331 on January 8, 2007, February 26, 2007, and August 13, 2007, respectively; and

WHEREAS, the appropriate city departments and utilities have reviewed the plans; and

WHEREAS, the Planning Commission concurs with the Community Development Department recommendation.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

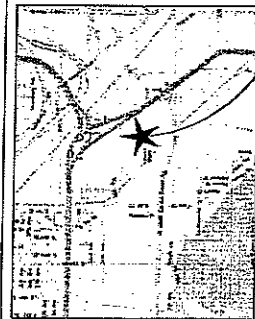
That the Planned Commercial Development Plan for the Metro Crossing Subdivision is hereby amended as set forth in the Planning Commission recommendation.

ADOPTED
AND
APPROVED July 28, 2008

THOMAS P. HANAFAN Mayor

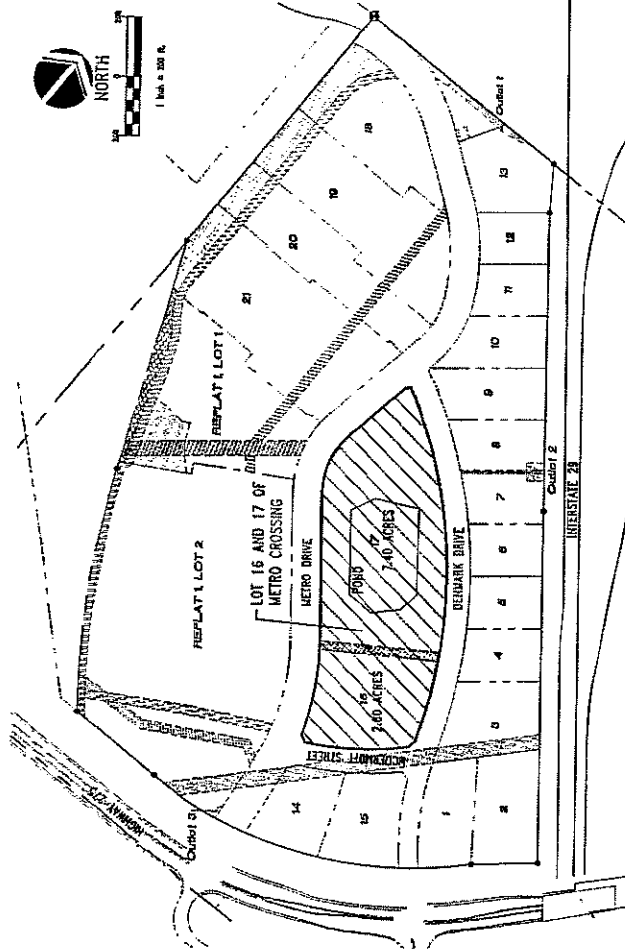
Attest: _____
JUDITH RIDGELEY City Clerk

Planning Case No. PC-08-003



VICINITY MAP

METRO CROSSING DEVELOPMENT PLANS FOR LOT 16 AND 17 COUNCIL BLUFFS, IOWA



SHEET NO.	SHEET NAME
4.01	COVER SHEET
4.02	LOT 16 PLAN
4.03	LOT 17 PLAN
4.04	SHEDS AND SHEDS PLAN
4.05	UTILITY PLAN
4.06	LANDSCAPE PLAN
4.07	LANDSCAPE PLAN
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DEVELOPER
METRO CROSSING LLC
2125 SOUTH 11TH ST.
COUNCIL BLUFFS, IA 51501

ENGINEER
THE SCHAUMER GROUP, INC.
1000 WEST 11TH ST.
COUNCIL BLUFFS, IA 51501

LEGAL DESCRIPTION
LOT 16 AND 17, METRO CROSSING, AS PLATTED AND RECORDED IN NEIGHBORHOOD COUNTY, IOWA.

ZONING
ALL PROPERTY WITHIN THE SUBDIVISION IS ZONED AS R-1, RESIDENTIAL SINGLE-FAMILY, AND IS SUBJECT TO THE ZONING ORDINANCES OF NEIGHBORHOOD COUNTY, IOWA.

FLOODWAY
THE SUBDIVISION IS LOCATED WITHIN A FLOOD HAZARD AREA, ZONE A, AND IS SUBJECT TO THE FLOOD HAZARD REGULATIONS OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA). THE SUBDIVISION IS LOCATED WITHIN A FLOOD HAZARD AREA, ZONE A, AND IS SUBJECT TO THE FLOOD HAZARD REGULATIONS OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA).

REVISIONS

NO.	DATE	DESCRIPTION
1	01/15/2001	INITIAL DESIGN
2	02/15/2001	REVISED DESIGN
3	03/15/2001	REVISED DESIGN
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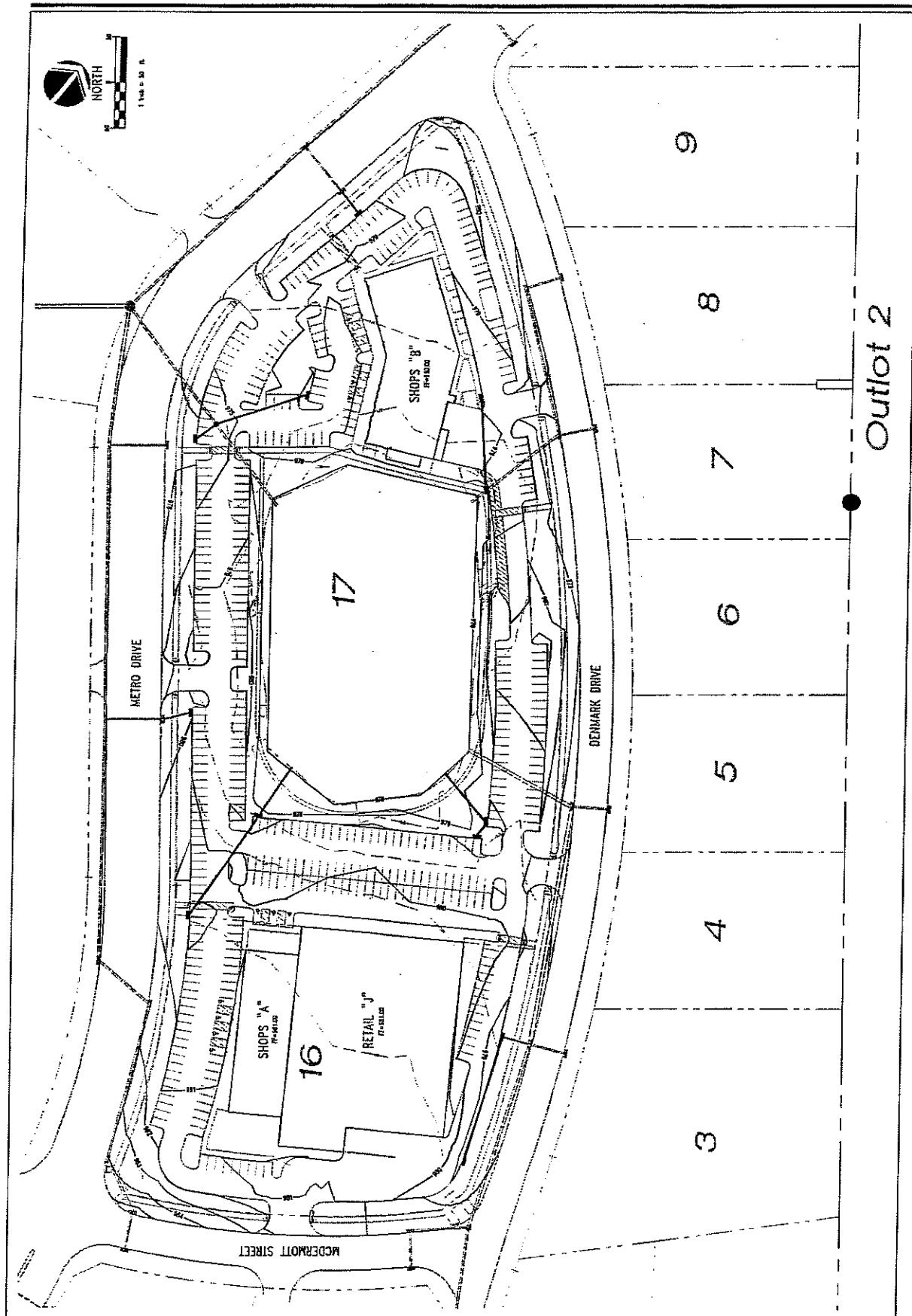
SCHAUMER
ARCHITECTS | ENGINEERS | PLANNERS

METRO CROSSING LOT 16-17
DEVELOPMENT PLANS
COUNCIL BLUFFS, IOWA
COVER SHEET

PROJECT NO.: 050556.001

A.01

SCHENKER
ARCHITECTS | ENGINEERS | PLANNERS

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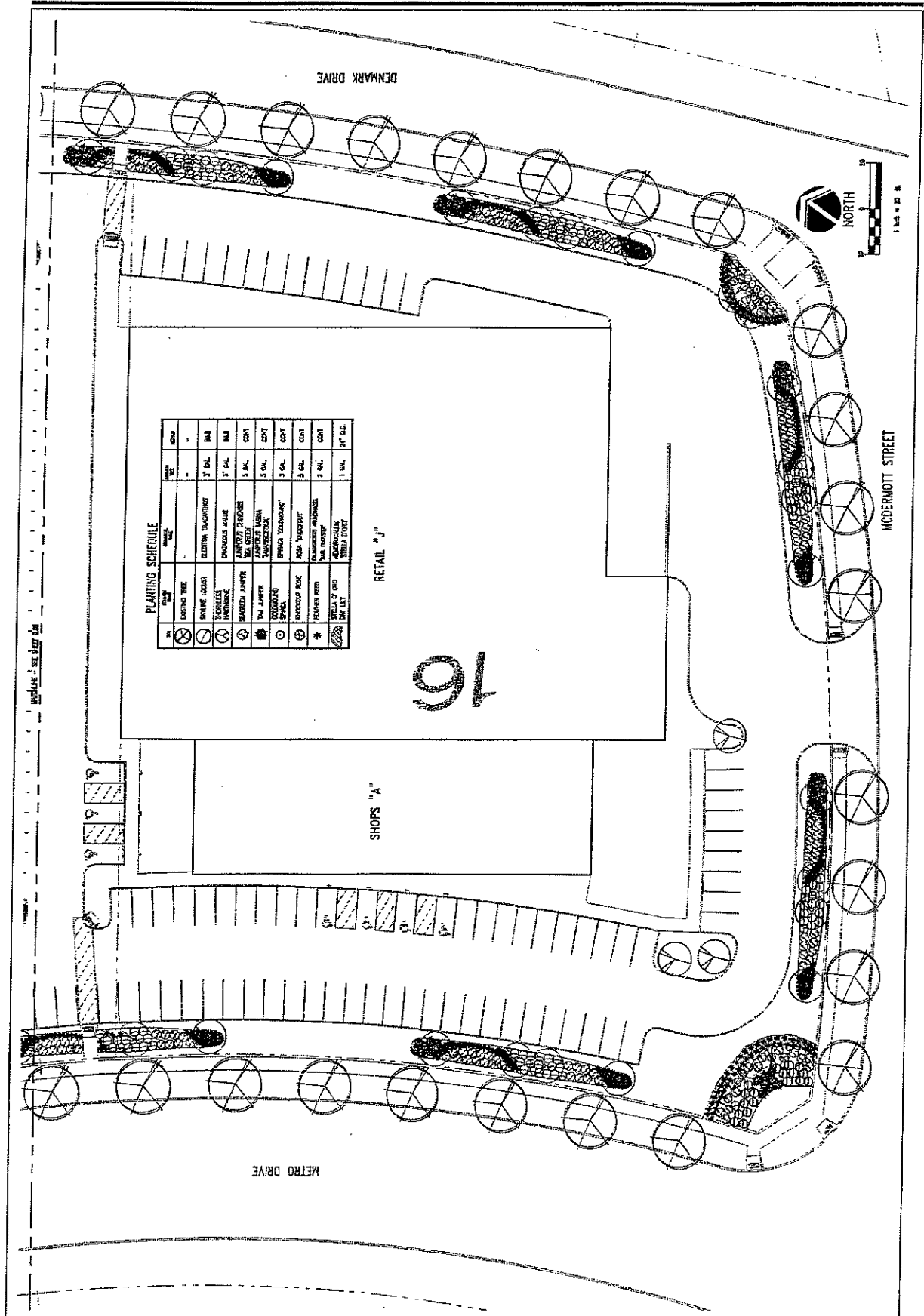
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SCHEMMER

ARCHITECTS | ENGINEERS | PLANNERS

METRO CROSSING LOT 16-17
DEVELOPMENT PLANS
COUNCIL BLUFFS, IOWA
LANDSCAPING PLAN

PROJECT NO: 05056.001
C.04



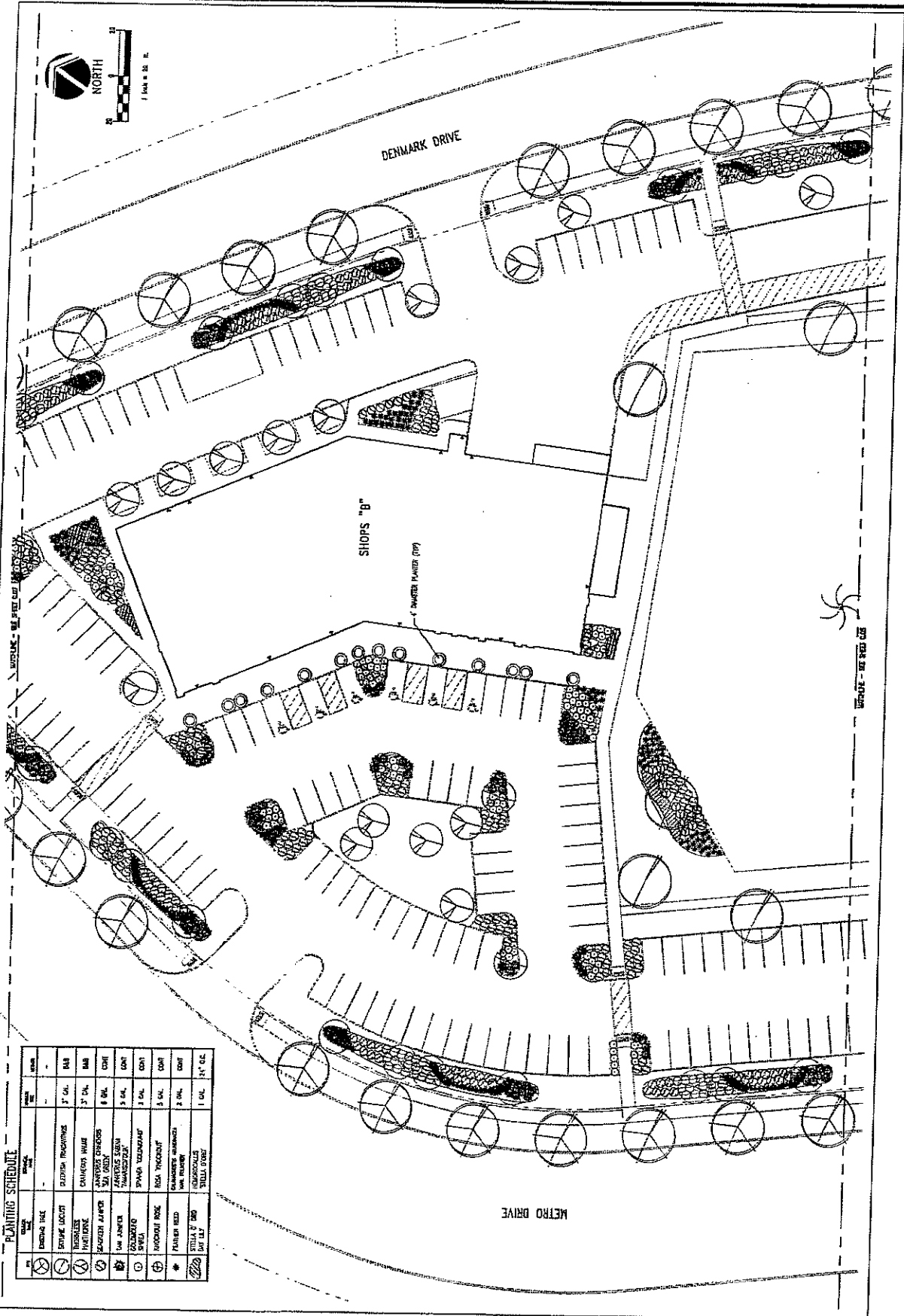
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ARCHITECTS & ENGINEERS & PLANNERS

METRO CROSSING LOT 16-17
DEVELOPMENT PLANS
COUNCIL BLUFFS, IOWA
LANDSCAPING PLAN

PROJECT NO.: 05056.001

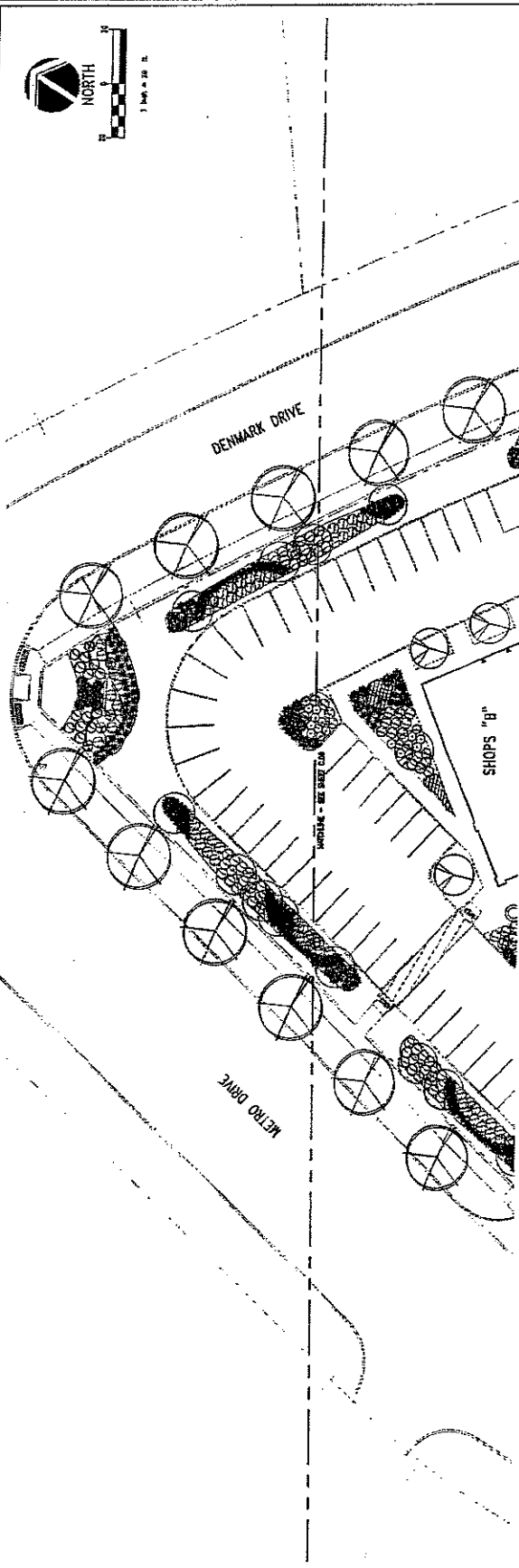
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PLANTING SCHEDULE

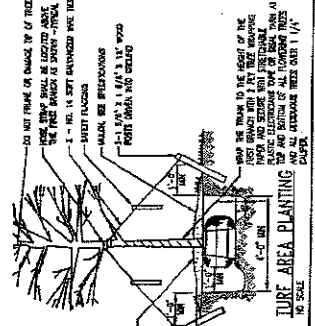
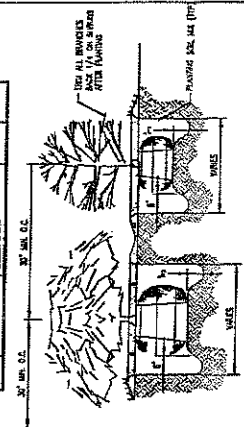
SYMBOL	PLANT	SIZE	QUANTITY	NOTES
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100	BRANDY MILK	1" x 1/2"		

DATE:	10/1/10
BY:	SCHEMMER
FOR:	SCHEMMER
PROJECT:	SCHEMMER
LOCATION:	SCHEMMER
SCALE:	SCHEMMER
NOTES:	SCHEMMER



PLANTING SCHEDULE

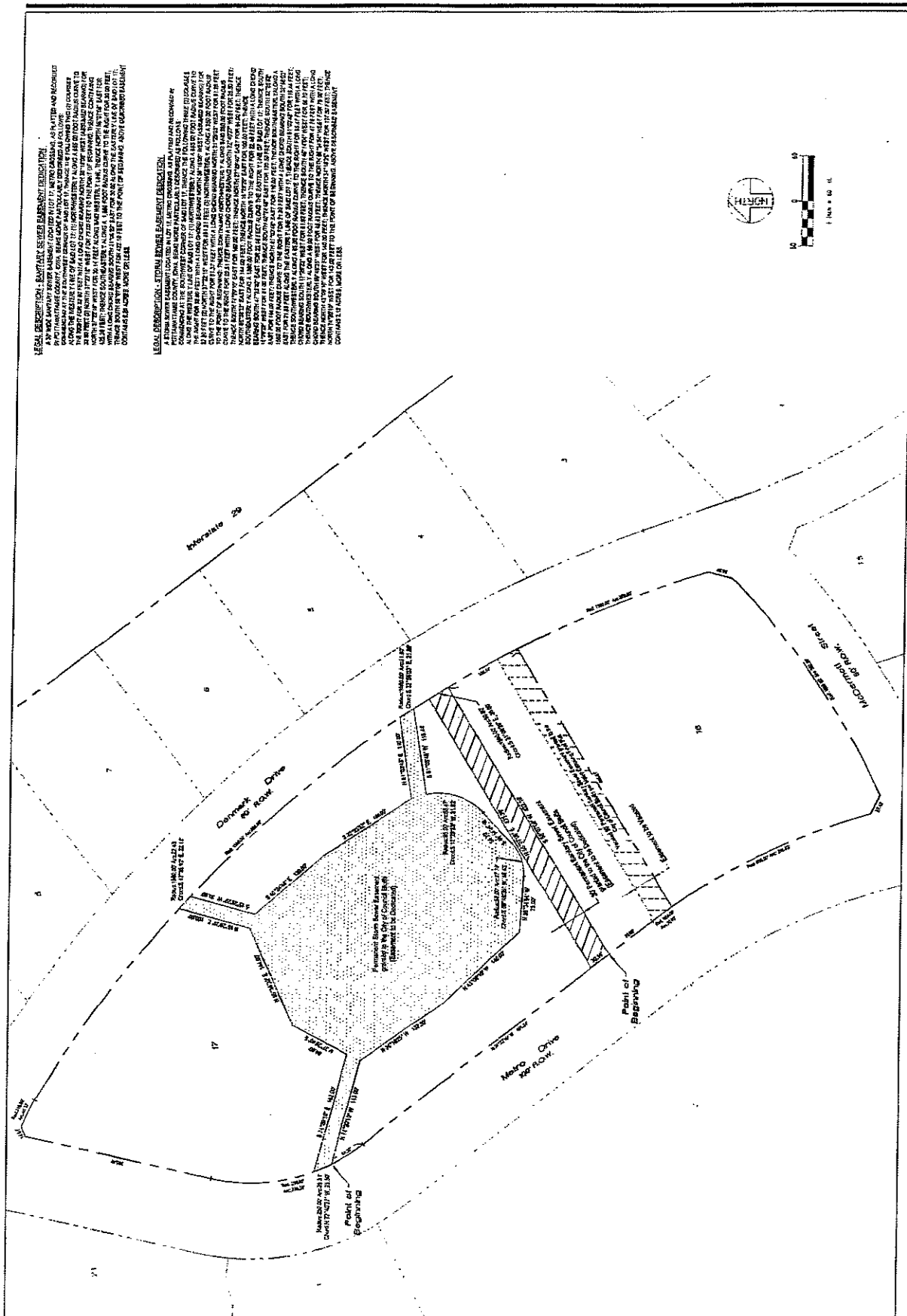
NO.	SYMBOL	PLANT	QUANTITY	NOTES
1	(Circle with cross)	EMERALD TREES	1	
2	(Circle with cross)	WINTER LIGULAE	1	
3	(Circle with cross)	WINTER LIGULAE	1	
4	(Circle with cross)	WINTER LIGULAE	1	
5	(Circle with cross)	WINTER LIGULAE	1	
6	(Circle with cross)	WINTER LIGULAE	1	
7	(Circle with cross)	WINTER LIGULAE	1	
8	(Circle with cross)	WINTER LIGULAE	1	
9	(Circle with cross)	WINTER LIGULAE	1	
10	(Circle with cross)	WINTER LIGULAE	1	
11	(Circle with cross)	WINTER LIGULAE	1	
12	(Circle with cross)	WINTER LIGULAE	1	
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14	(Circle with cross)	WINTER LIGULAE	1	
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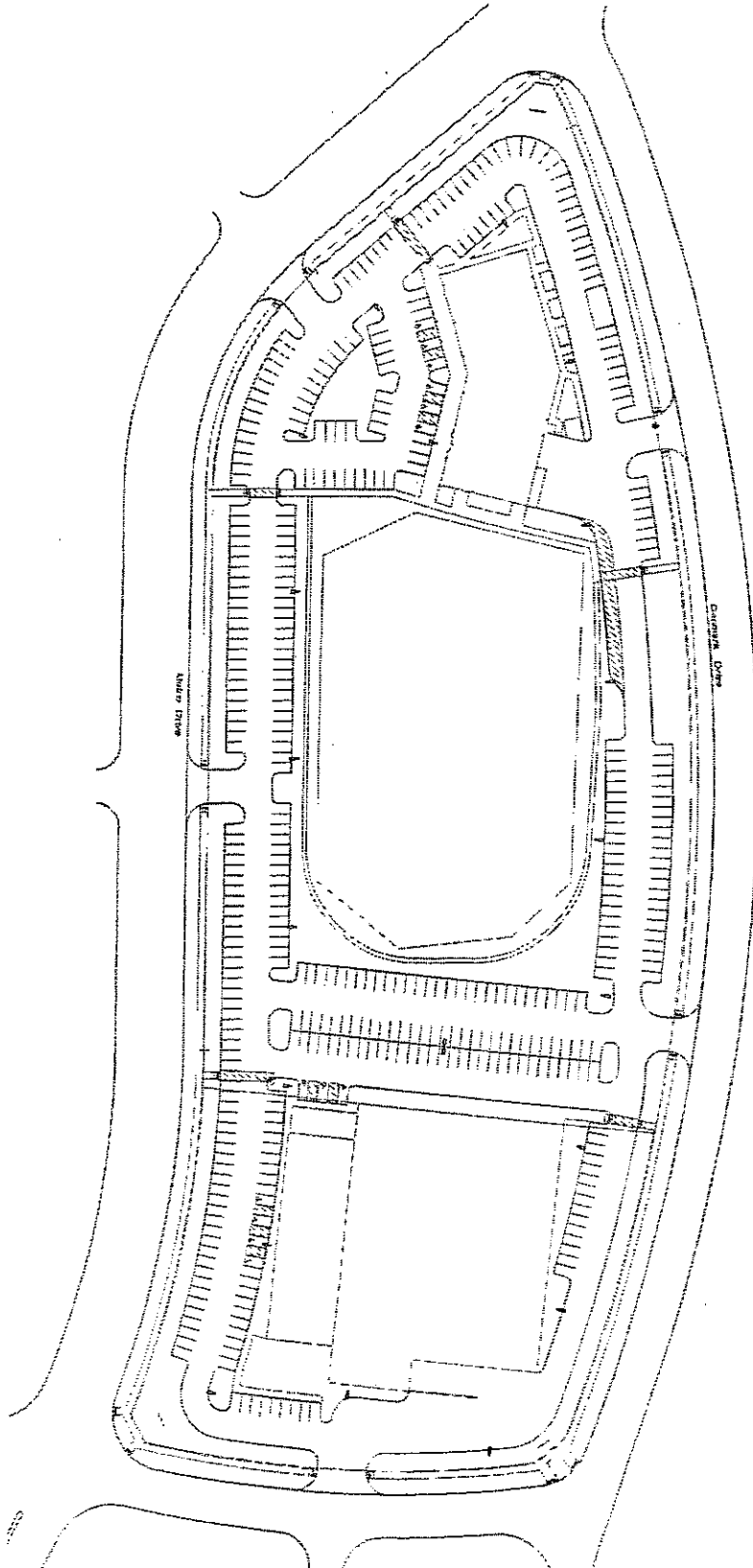
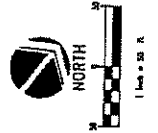


SHRUB PLANTING

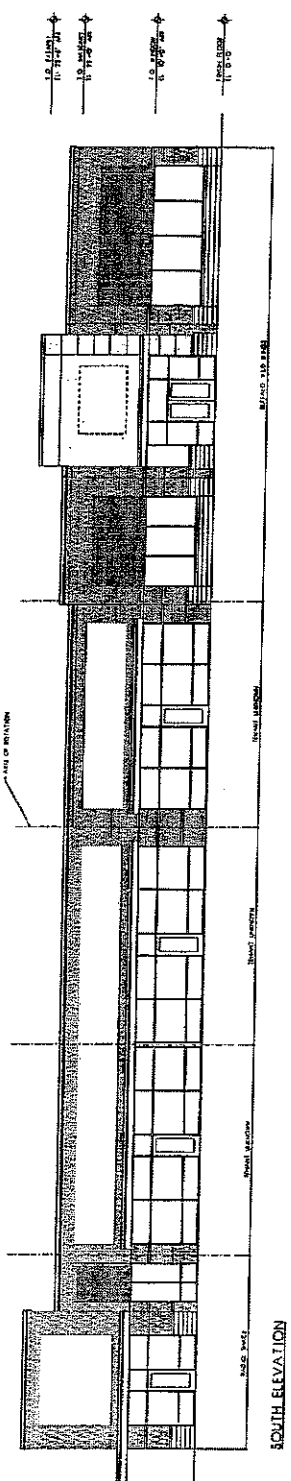
TREE AREA PLANTING

SCHENKER
ARCHITECTS | ENGINEERS | PLANNERS

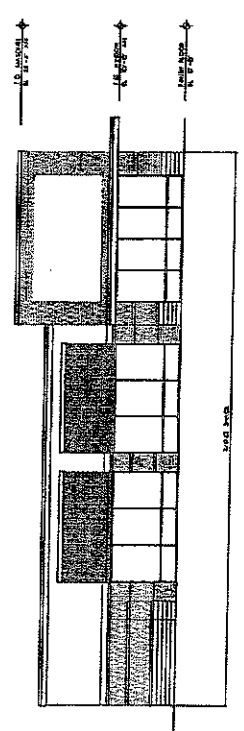
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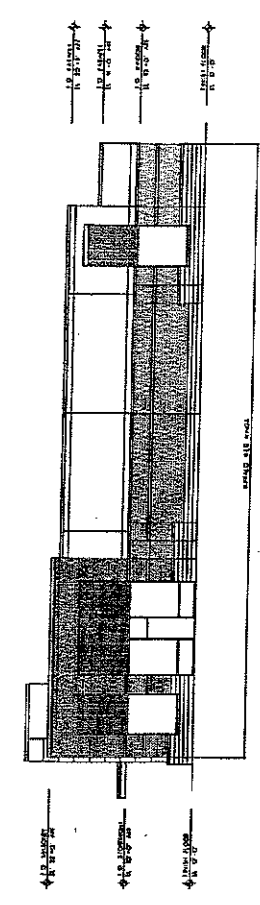
METRO CROSSING-
 SHOPS '81
 COUNCIL BLUFFS, IOWA
 WINCO REALTY INC.
 ANDERSON CONSTRUCTION CO.
 5418 TENDER PALMER ACQUISITION
 DRAFT PREPARED FRONT ELEVATION
 DATE: JUNE 7, 1988



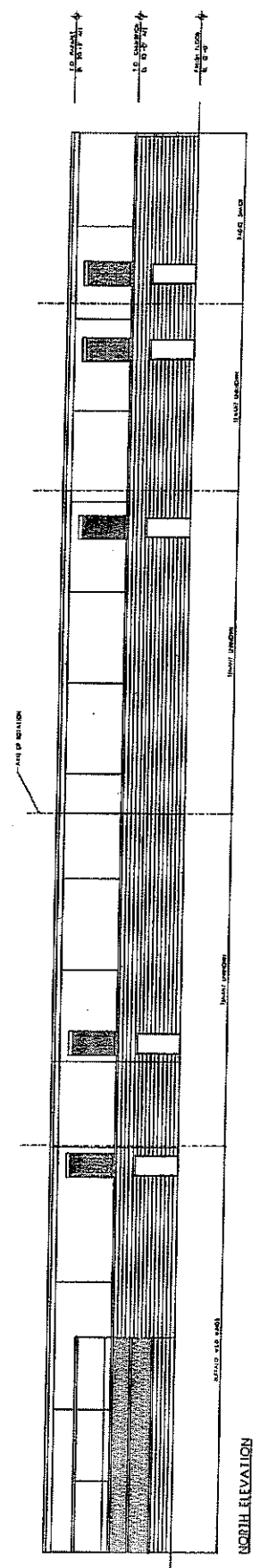
SOUTH ELEVATION



WEST ELEVATION



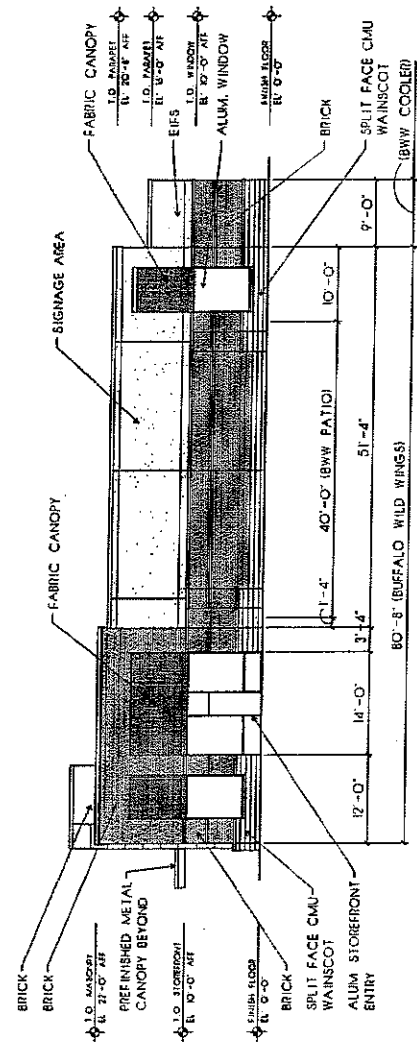
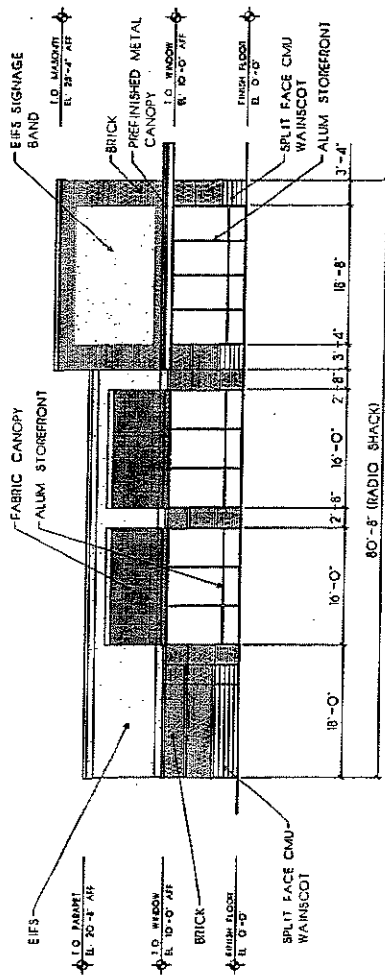
EAST ELEVATION



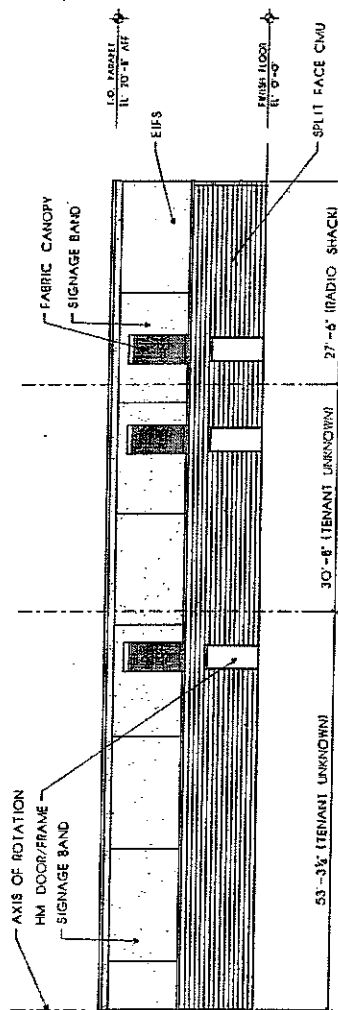
NORTH ELEVATION



**1362 Metro Crossing
Council Bluffs, IA
Aerial Date: June 2, 2008**

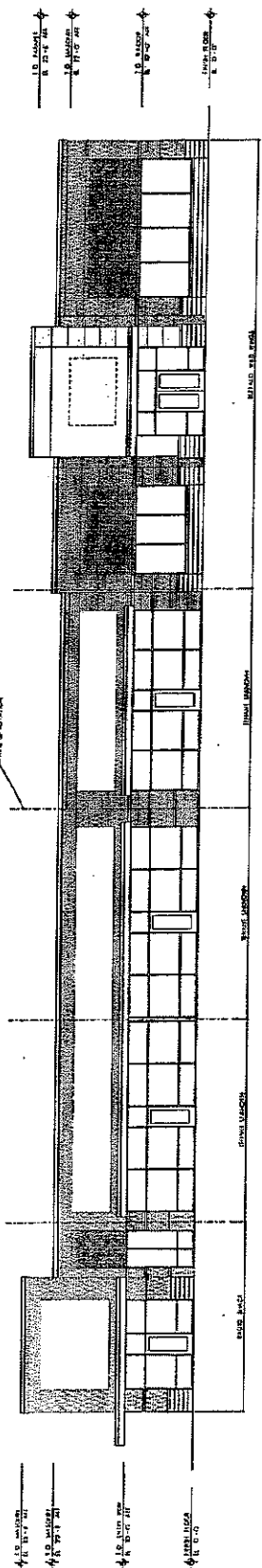


METRO CROSSING-
SHOPS "B"
 COUNCIL BLUFFS, IOWA
 KIMCO REALTY INC.
 ANDERSEN CONSTRUCTION CO.
 BARR VERMEER HAECKER ARCHITECTS
 EXHIBIT: PROPOSED NORTH & SOUTH
 ELEVATIONS
 DATE: JUNE 9, 2008

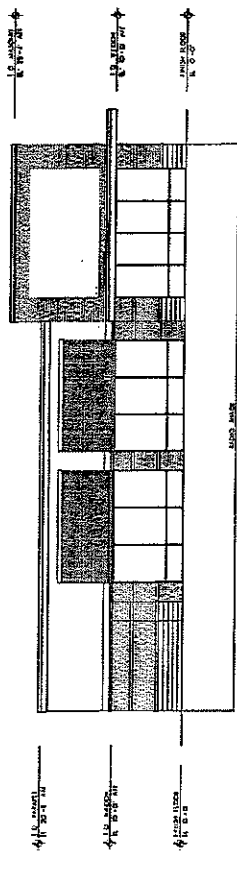


KIMCO REALTY INC.
ANDERSEN CONSTRUCTION CO.
BAHR VERMEER HAECKER ARCHITECTS
EXHIBIT: 'PROPOSED REAR ELEVATION' d
DATE: JUNE 9, 2008

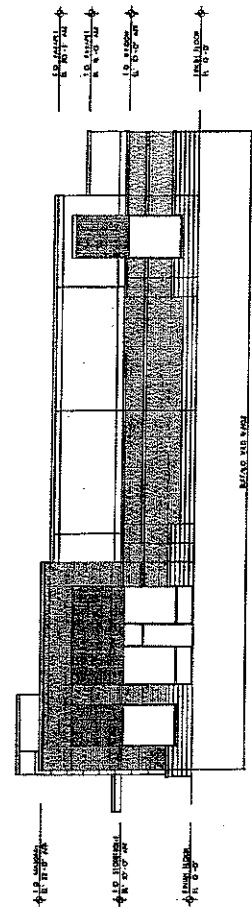
PROJECT: METRO CROSSING-
 SHOPS "B"
 1000 WEST 10TH AVENUE, SUITE 100
 COUNCIL BLUFFS, IOWA 51501
 OWNER: METRO CROSSING-
 SHOPS "B"
 1000 WEST 10TH AVENUE, SUITE 100
 COUNCIL BLUFFS, IOWA 51501
 ARCHITECT: JAMES H. HARRIS, INC.
 1000 WEST 10TH AVENUE, SUITE 100
 COUNCIL BLUFFS, IOWA 51501
 DATE: JUNE 9, 2008



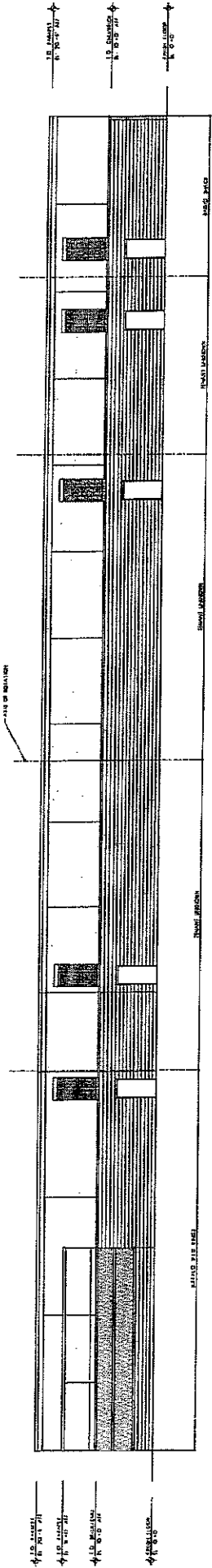
SOUTH ELEVATION



WEST ELEVATION



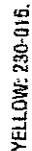
EAST ELEVATION



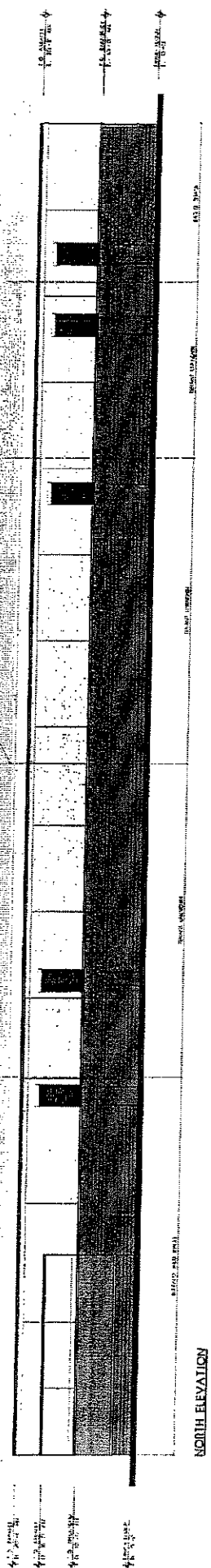
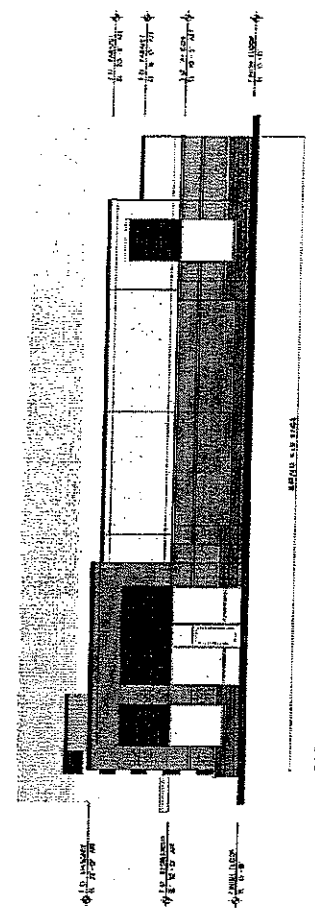
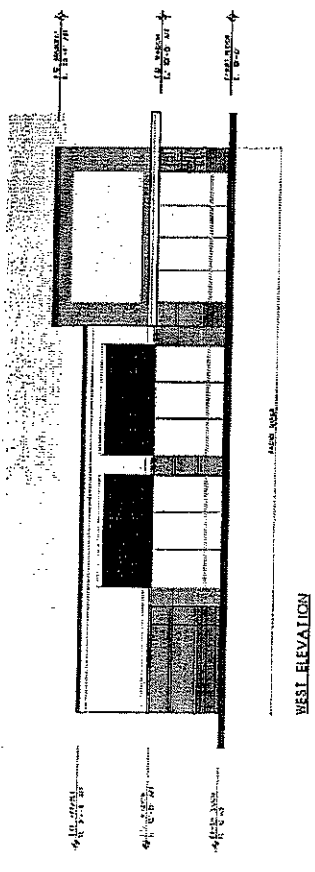
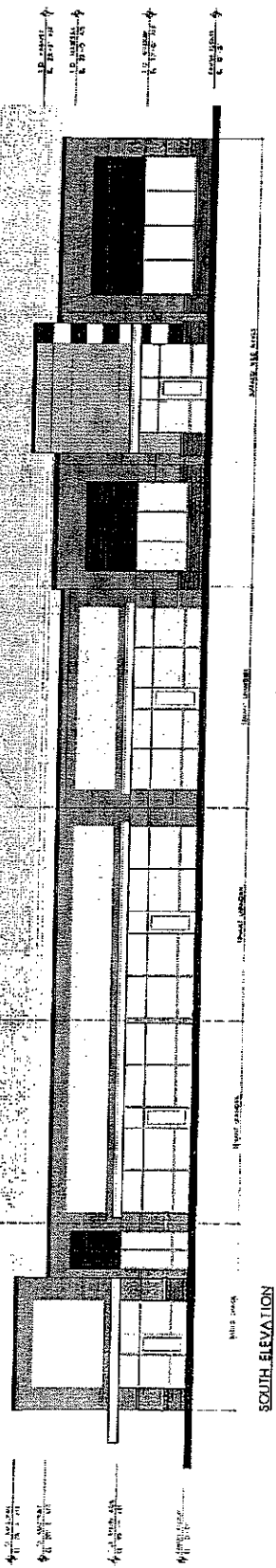
NORTH ELEVATION

METRO CROSSING-
 SHOPS "B"
 COUNCIL BLUFFS, IOWA
 JAMES H. HARRIS, INC.
 ARCHITECT
 1000 WEST 10TH AVENUE, SUITE 100
 COUNCIL BLUFFS, IOWA 51501
 DATE: JUNE 9, 2008

Metro Crossing
Council Bluffs, IA



Outparcel Monument Sign, #1362





LANOHA NURSERIES, INC.

152nd & WEST CENTER ROAD • OMAHA, NEBRASKA 68130

(402) 265-4103

FAX 265-2680

DATE:

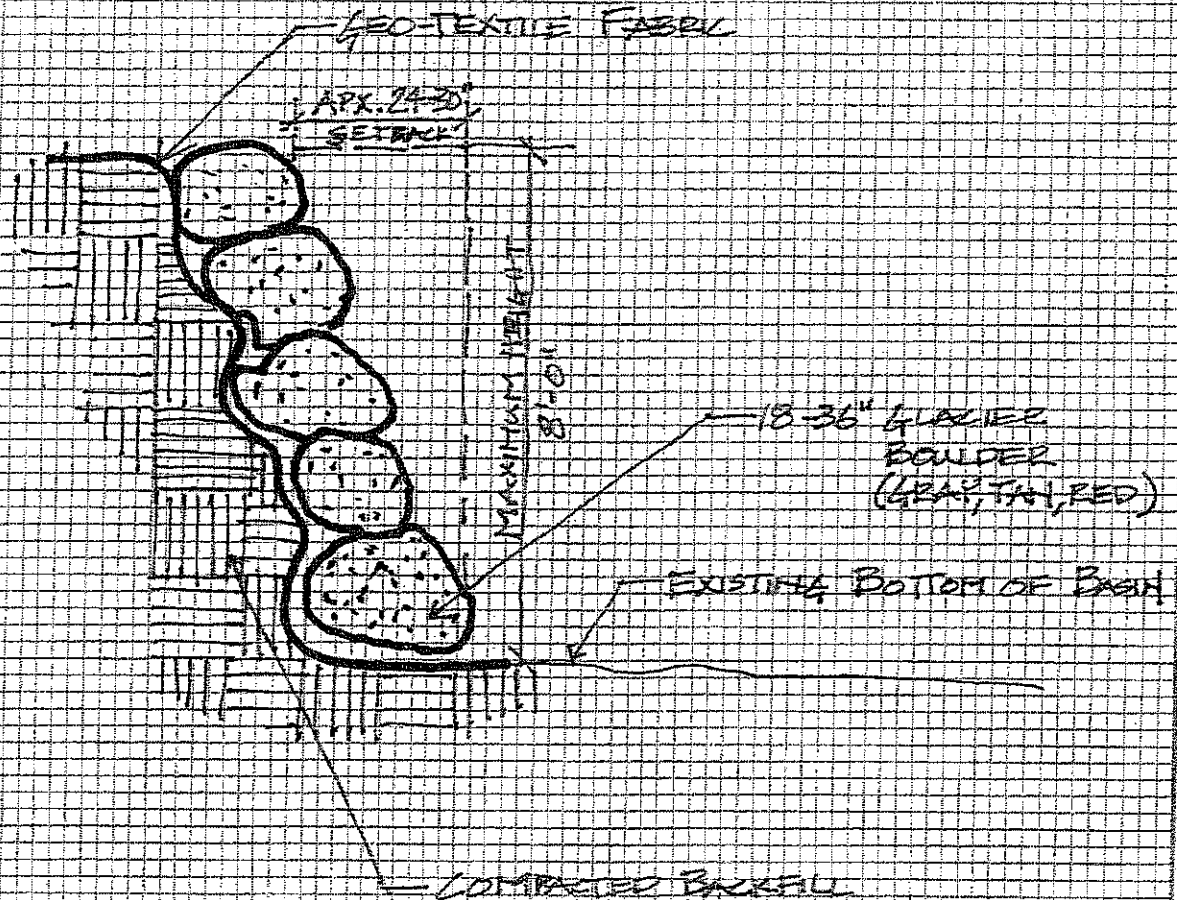
PROPOSAL FOR: **METRO CROSSING**

ADDRESS: **CB., IA.**

JOB SITE:

PHONE NO.:

PREPARED BY:



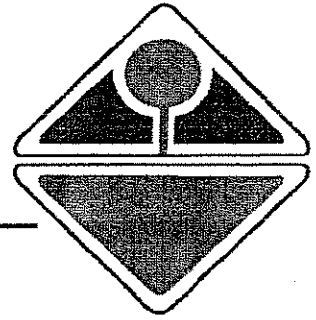
TYP. BOULDER WALL SECTION/DETAIL

N.T.S.

Landmark

NURSERIES

Choose A Beautiful Standard Of Living



19111 WEST CENTER ROAD OMAHA, NE 68130
TELEPHONE (402) 289-4103
FAX (402) 289-2080

○ Metro Crossing Water Feature Options



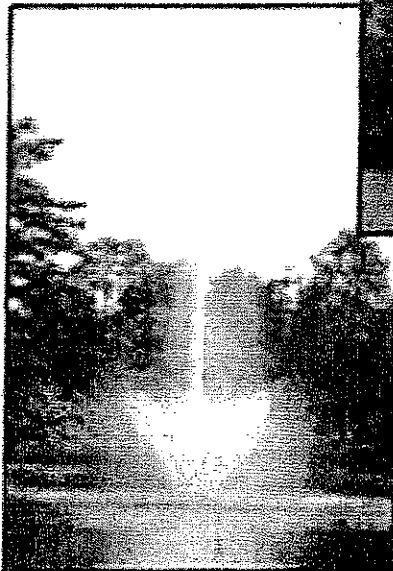
O.B.-P.F.



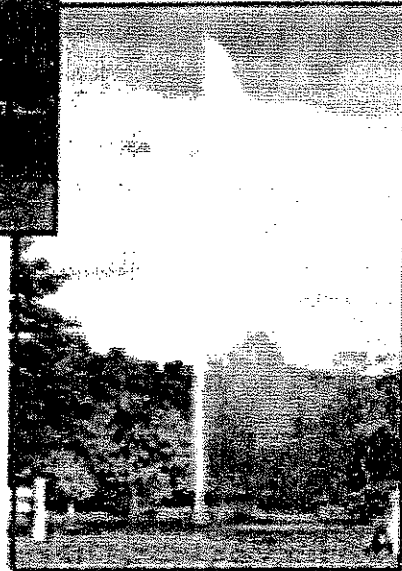
O.B.-T.F.



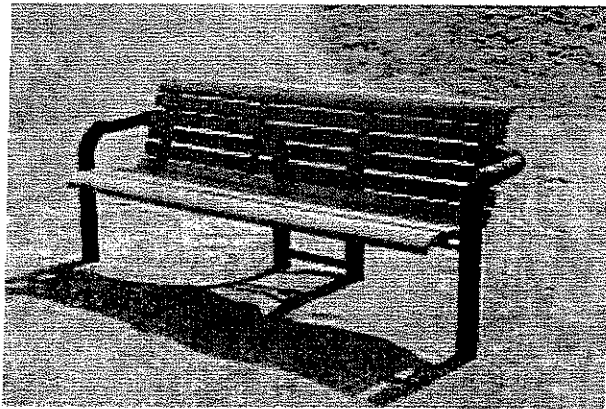
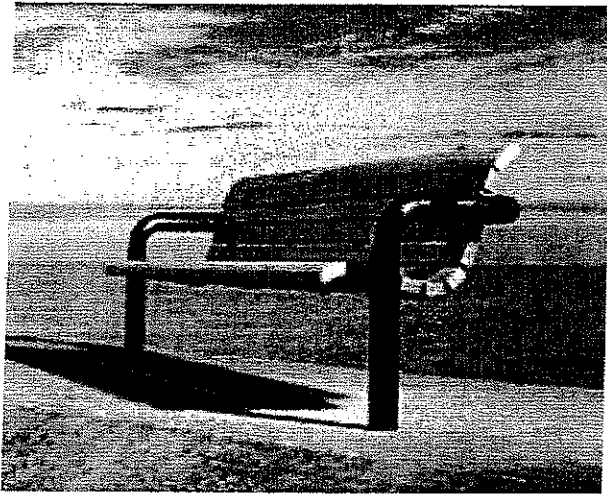
O.B.-M.F.



O.B.-A.S.

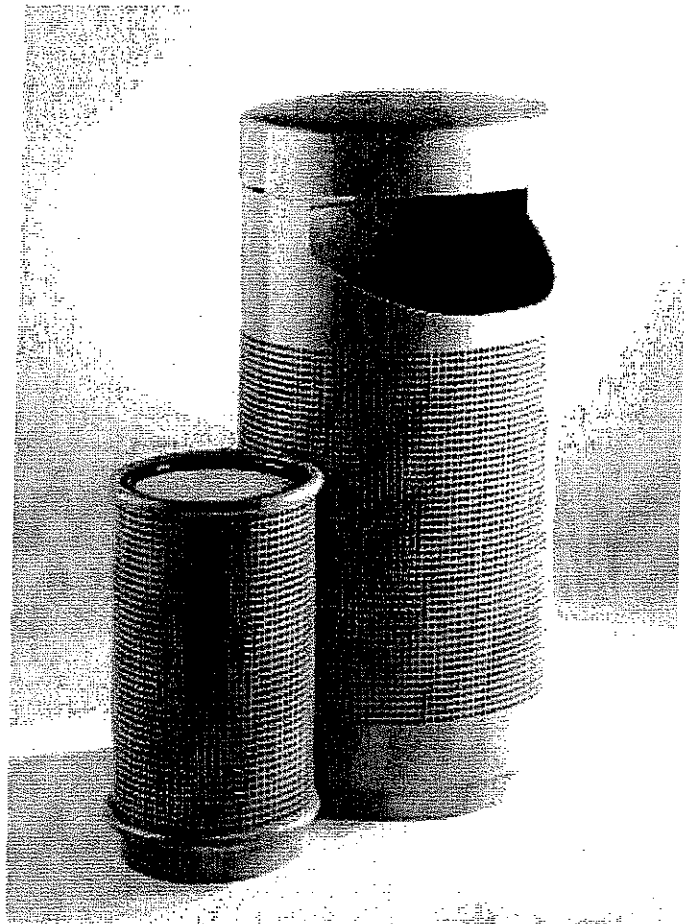


O.B.-S.N.



Petoskey is also durable. Its supports are formed of 3" o.d. tubular metal for superior strength. All seat insert styles are designed for high usage. Further, metal parts are finished with Landscape Forms' exclusive Pangard® II polyester powdercoat — a hard yet flexible finishing process that resists rusting, chipping, peeling and fading. Litter receptacles and ash urns are formed of perforated metal.

A versatile performer, Petoskey benches and litter receptacles can be specified with freestanding, surface mount or embedded support. Ash urns may be specified freestanding or surface mount. A wide selection of powdercoat colors is offered.



Photos:

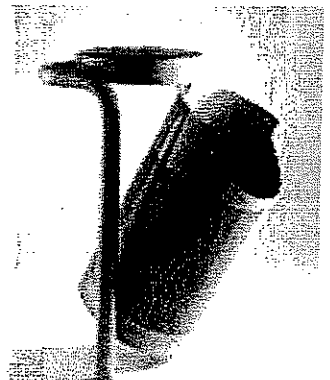
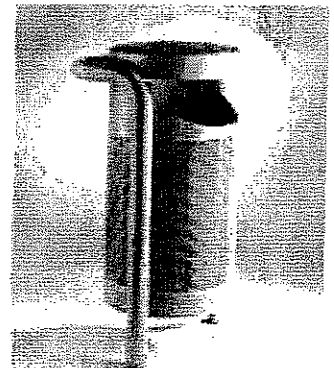
Top Left: Petoskey backed bench with dual embedded support, redwood seat insert, grotto powdercoat.

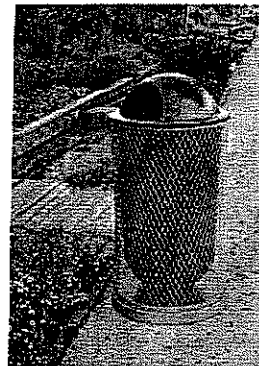
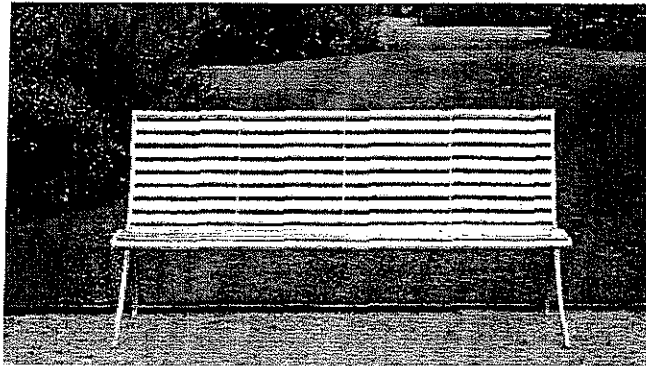
Bottom Left: Petoskey backed bench with quad freestanding support, PolySite™ seat insert, gray, grotto powdercoat.

Top Right: Petoskey litter receptacle, hinged lid, Petoskey ash urn, silver powdercoat.

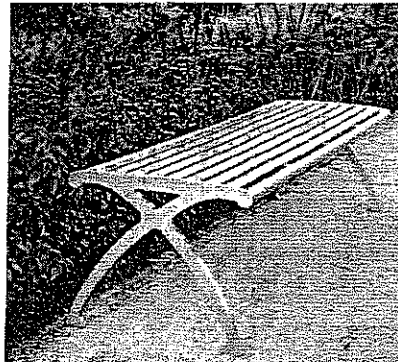
Center Right: Petoskey litter receptacle, embedded tube support, silver powdercoat.

Bottom Right: Petoskey litter receptacle, embedded tube support, silver powdercoat. Open to remove litter.



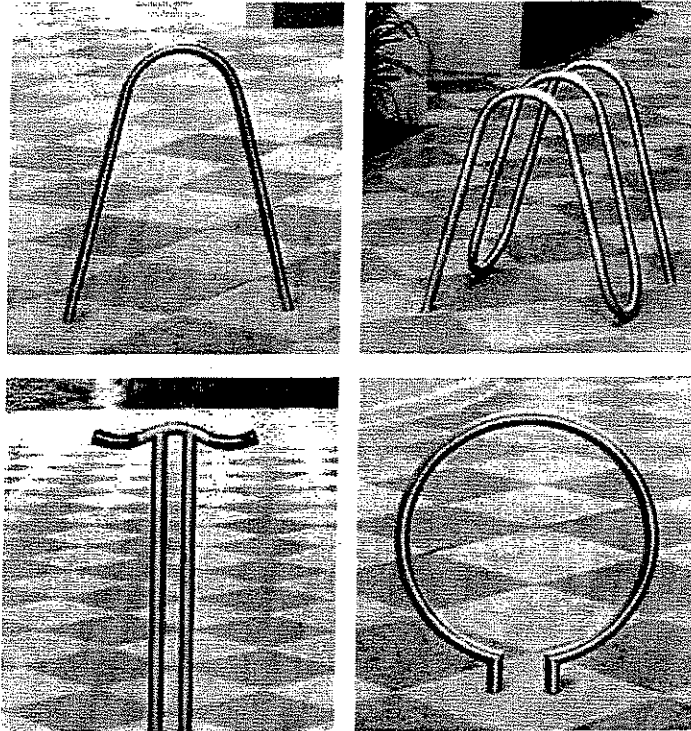


Parc Vue is a fresh take on the classic Parisian bench. Curves sans curlicues and energy expressed in a few sure strokes make a beautiful design statement for our time.



The Landmark Collection of outdoor furniture was designed by a trio of celebrated designers and architects and inspired by familiar themes in historic design, architecture and nature. Designer John Rizzi took his inspiration from traditional cast iron furniture and asymmetric patterns in nature. The Parc Vue bench achieves a delicate balance between the strength and lively gesture of its frame and the perceived lightness and linear order of its slatted seat. It is a sculptural form that has what Rizzi calls "traditional roots and its own dynamic presence." In the companion curved and mesh-caged Parc Vue litter receptacle, the designer combines historic reference and contemporary manufacture in an elegant utilitarian object suited to a variety of settings in urban environments.

Who says bike racks have to be boring? Landscape Forms offers four artful solutions for bicycle storage and security with options in function, form and finish.



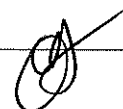
Bicycles are back in cities and on corporate and university campuses, and Landscape Forms provides multiple choices for storing and securing them. Pi, designed by landscape architect Bob Chipman, is a vertical rack in colorful powdercoat finishes on which bikes are hung by their frames. Bola, Flo and Ring, designed by Brian Kane, are fluid forms in handsome stainless steel that store bikes in the horizontal position.

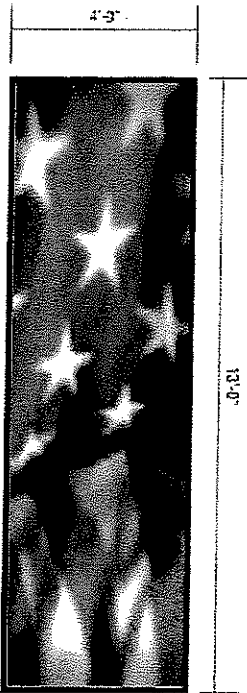
All Landscape Forms bike racks meet APBP (*Association of Pedestrian and Bicycle Professionals*) recommendations for support of bicycles at two places and locking in at least one. All racks are manufactured of robust tubular steel and are strong, durable, weather resistant and tested to Landscape Forms standards of quality. And all can help facilities earn LEED credit for encouraging environment-friendly bicycle use.

Council Communication

Department: Community Development Case No. PC-08-004 Applicant: IN Hoot LLC Patrick Buchan 1306 South 119 th Street Omaha, NE 68144 Sign Contractor: Omaha Neon Sign Company 1120 North 16 th Street Omaha, NE 68102	Resolution No. <u>08-229</u>	City Council: July 28, 2008 Planning Commission: July 8, 2008
Subject/Title		
Amend the Planned Commercial Development Plan for Lot 4, Bluffs Vision Subdivision Replat 1 relative to signage at Hooters Restaurant located at 2910 23 rd Avenue.		
Background/Discussion		
<p>City Council Resolution No. 08-05 on January 14, 2008, approved the Planned Commercial Development Plan for this 1.5 acre lot. The 4,928 square foot restaurant, with associated parking, sidewalk and landscaping is nearing completion. Permits have been issued for the signage approved with the original review, including a 10' tall monument sign, with 56 sq. ft. of sign area per face. Attached signs on the north and south elevations each have a 3' high by 16' long (48 sq. ft.) sign. The Hooters 'owl' is incorporated into the sign on the east elevation. Hooters wishes to add a 13' by 4' (52 sq. ft.) message board on the west side of the building as shown on the attachment. Amendments to development plans are subject to review and recommendation by the Planning Commission and final approval by the City Council.</p> <p>The sign will advertise restaurant specials. The animation on the sign cannot flash and must be consistent with the limits defined in the Code. The west wall of the building has no signage so the message board will further identify the operation.</p>		
Recommendation		
<p>The Community Development Department recommends amending the Planned Commercial development plan for Lot 4, Bluffs Vision Subdivision Replat 1 as approved by Resolution No. 08-05 on January 14, 2008 to allow an additional 52 square foot attached sign on the west elevation of the building. All other conditions relative to signage as approved by Resolution No. 08-05 remain in effect.</p>		
Public Hearing		
<p>Ron Whitman, Omaha Neon Sign Company, 1120 North 18th Street, appeared before the Planning Commission in favor of the request. No one appeared in opposition to the request</p>		
Planning Commission Recommendation		
<p>The Planning Commission recommends amending the Planned Commercial Development Plan for Lot 4, Bluffs Vision Subdivision, Replat 1, as approved by Resolution No. 08-05 on January 14, 2008 relative to signage.</p>		
VOTE: AYE 11 NAY 0 ABSTAIN 0 ABSENT 0 VACANT 0 Motion: Carried		
Attachment: Sign display by Omaha Neon Sign Prepared by: Gayle Malmquist, Development Services Coordinator		

60



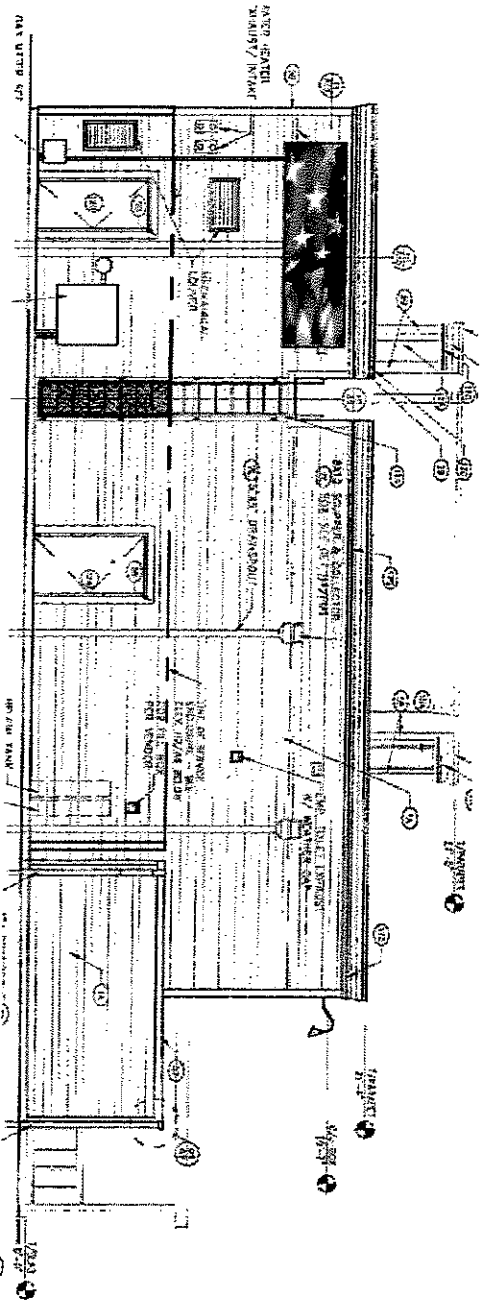


13'-0"

S/F FULL COLOR DISPLAY

SCALE: 3/8" = 1'-0"

INSTALL (1) ONE NEW S/F FULL COLOR ELECTRONIC
LED MESSAGE CENTER, RED, GREEN AND BLUE
LED ILLUMINATION. MOUNT TO EXTERIOR FASCIA
IN CUSTOMER SPECIFIED LOCATION.



RIGHT ELEVATION

SCALE: 1/8" = 1'-0"

Omaha Neon Sign Company
1120 N. 10th St. Omaha, NE 68102
402.464.1111

HOOTERS
Council Bluffs, IA

NOTICE:

ALL DRAWINGS, SPECIFICATIONS AND MATERIALS
BY AGREEMENT OF THE CUSTOMER AND THE
DRAWING OR SPECIFICATION SHALL BE
CONSIDERED TO BE THE PROPERTY OF THE
DRAWING OR SPECIFICATION AND THE
DRAWING OR SPECIFICATION SHALL BE
RETURNED TO THE CUSTOMER UPON
COMPLETION OF THE PROJECT AND THE
CUSTOMER'S SIGNATURE AND THE DRAWING
OR SPECIFICATION SHALL BE THE PROPERTY
OF THE CUSTOMER.

Project: _____ Date: _____
Scale: 1/8" = 1'-0"

NEW CONSTRUCTION

REMODELING

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REPAIRS

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RESOLUTION NO. 08-229

A RESOLUTION to amend the approved Planned Commercial Development Plan for Lot 4, Bluffs Vision Subdivision Replat 1, relative to signage at Hooters Restaurant, 2910 23rd Avenue.

WHEREAS, IN Hoot LLC is requesting an amendment to the approved Planned Commercial Development Plan for Lot 4, Bluffs Vision Subdivision Replat 1, relative to signage at Hooters Restaurant; and

WHEREAS, the Planned Commercial Development Plan for this 1.5 acre lot was approved by Resolution No. 08-05 on January 14, 2008; and

WHEREAS, the appropriate city departments and utilities have reviewed the request; and

WHEREAS, the Community Development Department recommends amending the Planned Commercial Development Plan for Lot 4, Bluffs Vision Subdivision Replat 1, as approved by Resolution No. 08-05 on January 14, 2008, to allow an additional 52 sq. ft. attached sign on the west elevation of the building. All other conditions relative to signage as approved by Resolution No. 08-05 remain in effect; and

WHEREAS, the Planning Commission concurs with the recommendation.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That the Planned Commercial Development Plan for Lot 4, Bluffs Vision Subdivision Replat 1 is amended as set forth above.

ADOPTED

AND

APPROVED

July 28, 2008

THOMAS P. HANAFAN

Mayor

Attest:

JUDITH RIDGELEY

City Clerk

Council Communication

Department: Community Development Case No. SUB-08-004 Applicant: Robert McCarthy Western Iowa Land Development P. O. Box 683, Avoca, IA 51521	Resolution No. <u>08-230</u>	City Council: 7/28/08 Planning Commission: 7/08/08
Subject/Title Preliminary plan approval for 59 lot single family residential subdivision to be known as Fox Run Landing – Phase III with a variance to allow lots to exceed the 3 to 1 lot depth to width ratio. Replat of Lot 38 of The Seven at Fox Run Landing Subdivision and Lots 15 and 20, Fox Run Landing. Location: North of 55 th Avenue between Council Pointe Road and South 36 th Street.		
Background/Discussion Western Iowa Land Development is requesting preliminary plan approval for Phase III of Fox Run Landing. This is a replat of Lot 38 of The Seven at Fox Run Landing approved by Resolution #06-41 on February 13, 2006. Replatting this 21 acre lot will create 59 single family residential lots bisected by a 2,323' long section of Middle Ferry Road. Middle Ferry will extend from Harding's Landing to Council Pointe Road on the east with a 178' extension to the north connecting to Crogan's Way. The new 26' wide public street will be centered on 50' wide right-of-way and built to City standards. A 10" sanitary sewer line was installed in the proposed right-of-way with the platting of The Seven. Storm sewer pipes and inlets will convey storm water runoff into the system of 5 interconnected retention ponds designed to retain run-off from a 100-year event at an elevation of 969.47 feet. This is 2.5'+ below the recommended minimum basement floor elevation of 972.0 feet. According to the developer's engineer, only slab-on-grade homes will be constructed with minimum elevations at or above 973.0 feet. Water main will connect to the existing mains located at the connecting streets. Streetlights, communication, electric and gas services will be extended to serve the subdivision. The subdivision will be completed in one phase. The preliminary plan for Fox Run Landing as reviewed in 1998 showed Crogan's Way continuing south to intersect with 55 th Avenue. It now stops at a 'T' intersection at Middle Ferry resulting in over 800' between cross streets which all lead north within the subdivision rather than to the perimeter. Approval of the preliminary plan is tentative and does not constitute acceptance of the final plat, 'but is deemed to be an authorization to proceed with the preparation of final construction plans or performance guarantee and the final plat'. (§14.11.060.04 – Subdivision Ordinance) 1. The proposed subdivision is generally consistent with the 1994 Comprehensive Plan and the purpose and intent of the Zoning and Subdivision Ordinances. The existing R-1/Single Family Residential zoning is appropriate for the intended use. The lots all exceed the minimum lot size required by the Zoning Ordinance. Lots 23, 24, 27, 28 and 40 are more than three times deeper than they are wide. The applicant has requested a variance. 2. Each of the 59 proposed lots will directly abut public right-of-way. 3. With adequate engineering and construction controls, the land is suitable for development. 4. Storm drainage will flow into pipes and street inlets into the retention pond (Out lot 1) created with the platting of The Seven at Fox Run Landing Replat 1. A slight increase in pond storage volume, adequate to handle Phase III development, is noted in the drainage report. Additional storage volume is needed with any development east of Council Pointe Road. 5. The rear of the lots along Crogan's Way Circle sit about 7' higher than the abutting lots in Phase III. The entire northern border of Phase III sits lower than the existing lots. Due to the flat grade, storm water will collect in those low-lying areas. In addition, standing water is likely to collect in the back of		

CR

Lots 1 through 15, along 55th Avenue. Construction of any structures, like sheds, will further impede the conveyance of storm water into the pond. An easement limiting construction in the rear yards of Lots 1 through 15 and Lots 31 through 59 should be incorporated into the final plat. A better solution would include a paved swale or piping to move the flows out of the flat area more directly into the retention area.

6. Public Works has reviewed the street profile and asks for further elevation of the roadway. There are nine low spots in Middle Ferry which would be inundated with a 100 year event. Due to the excessive length of the roadway without alternative egress options, travel would be impeded.

7. Water and other utilities can be extended with sufficient capacity to serve the proposed development. The Water Works Board of Trustees has approved the main extension agreement. Design is underway. The developer bears the cost of extending lines to the subdivision and service to each lot. The specifics of MidAmerican Energy's request are listed in the recommendation section.

8. Fire hydrant placement consistent with the minimum standards of the fire safety code shall be installed with the water line contract. All costs for installing hydrants will be borne by the developer.

9. A variance has been requested to exceed the lot depth to width ratio that is noted in §14.14.020 'Lot Layout' of the Subdivision Ordinance. §14.11.040 –Variance(s) in the Subdivision Ordinance states that both the Planning Commission and the City Council shall review variance requests along with the preliminary plan. The location for Middle Ferry Road was anticipated with the final plat for The Seven and sanitary sewer installed, dictating the general lot layout as shown on the plan. Five lots are more than three times deeper than their width. A variance can be granted 'where it can be shown that due to special conditions, a literal enforcement of the ordinance will result in unnecessary hardship', the City shall have the power to vary such regulation so that substantial justice will be accomplished, provided that such variance would:

- a) not be contrary to the public interest;
- b) be in the interest of the City;
- c) be within the spirit and intent of the ordinance;
- d) not be detrimental to future residents in or near the proposed subdivision;
- e) be consistent with the comprehensive plan.

Approval of the variance will allow the best use of the land while accommodating the existing location of the installed infrastructure without any negative effect upon other property or to the public interest

Recommendation

The Community Development Department recommends approval of the preliminary plan for Fox Run Landing Phase III, as shown on Attachment 'A', including a variance to allow lots to exceed the maximum 3 to 1 lot depth to width ratio, subject to the following conditions:

1. Conform to all City standards and specifications, the zoning and subdivision ordinances (unless relief granted by variance) and the Department of Public Works Standards for Public Improvements. All utilities shall be installed underground. The location of streetlights shall be determined by the City and installed at developer's expense, prior to final plat approval
2. Install fire hydrants, at developer's expense, to comply with the Fire Safety Code and Water Works requirements.
3. MidAmerican Energy has underground electric facilities in the area. The developer must maintain clearances from those facilities and pay all costs associated with extending or relocating them. MidAmerican requests a 10' wide easement along the front and street side yard property line of all lots and also a 10' wide easement along the rear property lines of Lots 45 through 59. The developer is responsible for the installation of two 4" conduits at all street crossings. The conduit layout and charges will be determined with receipt of the final plat. The developer will pay for the extension of service lines with a refundable contract.
4. Construction plans and comprehensive plans for grading, drainage and erosion control, including right-of-way during site preparation, utility installation and construction shall be submitted to the Public Works Department for review and approval prior to beginning any earth moving activity. All

necessary local and state permits, including a storm water pollution prevention plan and grading permit shall be reviewed and approved by the proper review authority.

5. Prior to beginning construction of Middle Ferry Road, the integrity of the sanitary sewer collection lines shall be tested as required by the Public Works Department.

6. Roadway and surface drainage shall be modified to incorporate the concerns identified in Items #5 and #6 in the Background/Discussion section above. This shall include a notation on the final plat that nothing can be built that would obstruct storm conveyance in the rear yards of Lots 1 through 15 and Lots 31 through 59. In addition, serious consideration must be given to installing a paved swale or pipes to direct storm flows into the pond and eliminate standing water resulting from the lack of fall. The solution must be designed to comply with municipal design standards, reviewed, and approved by the Public Works Department prior to consideration of the final plat.

7. An erosion and sediment control plan shall be developed for approval by the Public Works Department which shall include temporary and permanent measures, vegetative cover, structural measures, timing and a maintenance and inspection program to address removal of sediment during construction and following any rainfall event.

8. Sidewalk shall be installed along the street frontage of each lot at no expense to the City, prior to issuance of a certificate of occupancy for each house.

Public Hearing

John Jerkovich, representing the applicant, appeared before the Planning Commission in favor of the request. The following appeared in opposition: Brad Point, 3102 Gold Rush Road and Ken Adkins, 3049 55th Avenue.

Planning Commission Recommendation

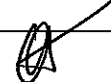
The Planning Commission recommends approval of the preliminary plan for Fox Run Landing Phase III, as shown on Attachment 'A', including a variance to allow lots to exceed the maximum 3 to 1 lot depth to width ratio, subject to the conditions cited in the staff report.

VOTE: AYE 8 NAY 0 ABSTAIN 3 ABSENT 0 Motion: Carried

Attachment 'A'

Engineer: HGM Associates Inc., 640 5th Avenue, P. O. Box 919, Council Bluffs, IA 51502-0919

Submitted by: Gayle M. Malmquist, Development Services Coordinator



RESOLUTION NO. 08-230

A RESOLUTION granting preliminary plan approval for a 59-lot single family residential subdivision to be known as Fox Run Landing – Phase III, including a variance to allow lots to exceed the 3 to 1 lot depth to width ratio.

WHEREAS, Western Iowa Land Development is requesting preliminary plan approval for Phase III of Fox Run Landing. This is a replat of Lot 38 of The Seven at Fox Fun Landing approved by Resolution 06-41 on February 13, 2006; and

WHEREAS, a variance is also requested to allow the lots to exceed the 3 to 1 lot depth to width ratio; and

WHEREAS, the preliminary plan has been reviewed by the appropriate city departments and utilities; and

WHEREAS, the Planning Commission concurs with the Community Development Department, and recommends approval of the preliminary plan for Fox Run Landing Phase III, as shown on Attachment “A”, including a variance to allow lots to exceed the maximum 3 to 1 lot depth to width ratio, subject to the following conditions:

1. Conform to all City standards and specifications, the zoning and subdivision ordinances (unless relief granted by variance) and the Department of Public Works Standards for Public Improvements. All utilities shall be installed underground. The location of streetlights shall be determined by the City and installed at developer's expense, prior to final plat approval.
2. Install fire hydrants, at developer's expense, to comply with the Fire Safety Code and Water Works requirements.
3. MidAmerican Energy has underground electric facilities in the area. The developer must maintain clearances from those facilities and pay all costs associated with extending or relocating them. MidAmerican requests a 10' wide easement along the front and street side yard property line of all lots and also a 10' wide easement along the rear property lines of Lots 45 through 59. The developer is responsible for the installation of two 4" conduits at all street crossings. The conduit layout and charges will be determined with receipt of the final plat. The developer will pay for the extension of service lines with a refundable contract.
4. Construction plans and comprehensive plans for grading, drainage and erosion control, including right-of-way during site preparation, utility installation and construction shall be submitted to the Public Works Department for review and approval prior to beginning any earth moving activity. All necessary local and state permits, including a storm water pollution prevention plan and grading permit shall be reviewed and approved by the proper review authority.

5. Prior to beginning construction of Middle Ferry Road, the integrity of the sanitary sewer collection lines shall be tested as required by the Public Works Department.
6. Roadway and surface drainage shall be modified to incorporate the concerns identified in Items #5 and #6 in the Background/Discussion section of the staff report. This shall include a notation on the final plat that nothing can be built that would obstruct storm conveyance in the rear yards of Lots 1 through 15 and Lots 31 through 59. In addition, serious consideration must be given to installing a paved swale or pipes to direct storm flows into the pond and eliminate standing water resulting from the lack of fall. The solution must be designed to comply with municipal design standards and reviewed and approved by the Public Works Department prior to consideration of the final plat.
7. An erosion and sediment control plan shall be developed for approval by the Public Works Department which shall include temporary and permanent measures, vegetative cover, structural measures, timing and a maintenance and inspection program to address removal of sediment during construction and following any rainfall event.
8. Sidewalk shall be installed along the street frontage of each lot at no expense to the City, prior to issuance of a certificate of occupancy for each house.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That preliminary plan approval for Fox Fun Landing Phase III, as shown on Attachment "A", including a variance to allow lots to exceed the maximum 3 to 1 lot depth to width ratio, is hereby approved subject to the conditions set forth above.

ADOPTED
AND
APPROVED July 28, 2008

THOMAS P. HANAFAN

Mayor

Attest: _____

JUDITH RIDGELEY

City Clerk

PRELIMINARY PLAT

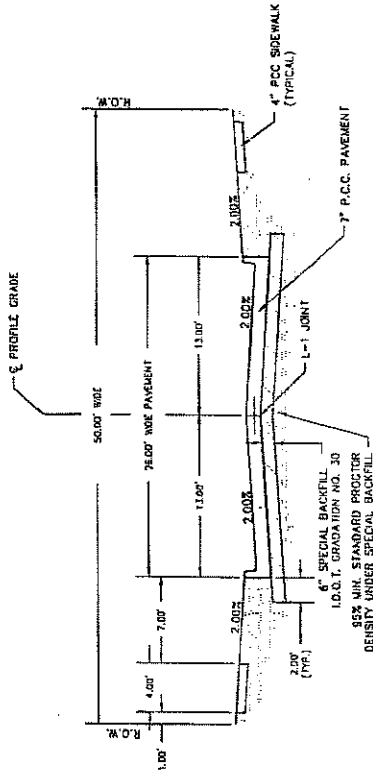
FOX RUN LANDING - PHASE

LOTS 1 THRU 59 INCLUSIVE

BEING A REPLAT OF LOT 38 OF "THE SEVEN AT FOX RUN LANDING"
IN THE CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA

CASE #SUB-08-004

ATTACHMENT A



TYPICAL CROSS SECTION

ALL STREETS - NOT TO SCALE

CURRENT OWNER/DEVELOPER:

WESTERN IOWA LAND DEVELOPMENT, L.L.C.
ROBERT MCCARTHY
P.O. BOX 683
AVOCA, IOWA 51521

ENGINEER:

HGM ASSOCIATED, INC.
640 FIFTH AVENUE
COUNCIL BLUFFS, IOWA 51502

ZONING:

EXISTING ZONING OF PROPOSED
FOX RUN LANDING - PHASE III
SUBDIVISION IS CLASS R-1, CITY
PROPOSED ZONING OF PROPOSED
FOX RUN LANDING - PHASE II
SUBDIVISION IS CLASS R-1, CITY

EXISTING FLOOD PLAIN:

MISSOURI RIVER FLOOD PLAIN
FEMA FLOOD ZONE "X" - PROTECTED BY LEVEE
NO FLOODWAY OR FRINGE ENCROACHMENT

STORM WATER DETENTION:

EXISTING

BOUNDARY SURVEY:

BOUNDARY SURVEY WILL BE PROVIDED BY
HGM ASSOCIATES INC.

NOTES:

PROPOSED SEWER: CITY SEWER
UAC EXISTING SANITARY MAIN MAKE LATERAL
CONNECTIONS. CONSTRUCT NEW STORM SEWER AND
INTAKES. NEW SEWER TO BE DEDICATED TO CITY
COUNCIL BLUFFS.
PROPOSED WATER: CITY WATER
CONNECTIONS TO BE DESIGNED BY CDM
DEDICATION OF R-O-W: YES
2.87 ACRES OF 30' WIDE R-O-W WILL BE DEDICATE
TO CITY OF COUNCIL BLUFFS.
SURFACE RUNOFF: STORM SEWER TO EXISTING
SUBDIVISION DETENTION

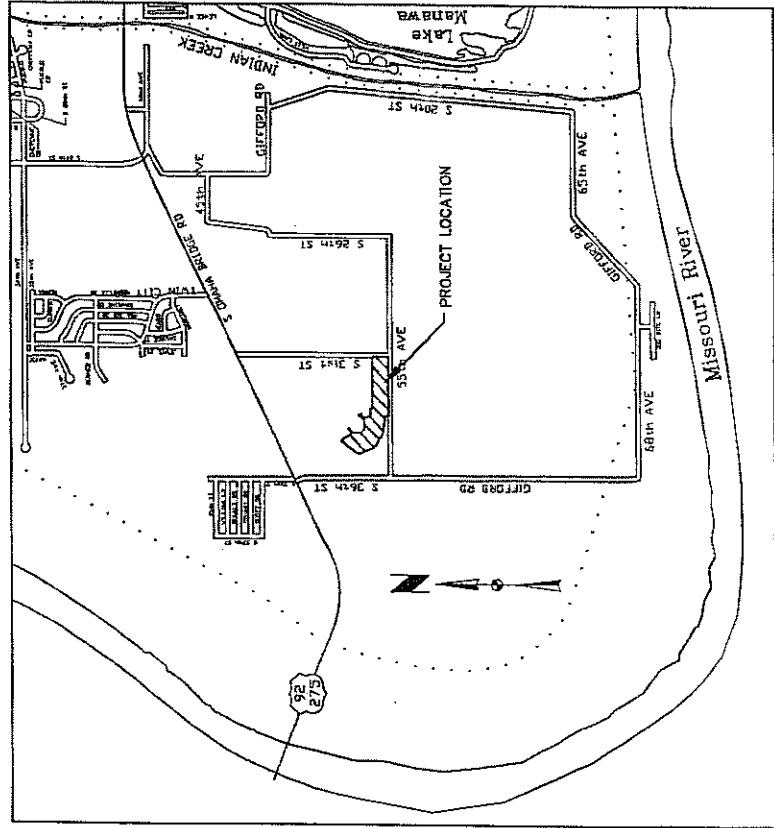
SPECIFICATIONS

THE URBAN STANDARD SPECIFICATIONS FOR PUBLIC IMPROVEMENTS,
2007, AND CITY OF COUNCIL BLUFFS SUPPLEMENTAL SPECIFICATIONS
2007, SHALL APPLY TO THIS PROJECT.

VERTICAL CONTROL

NAVD 83

BENCH MARK OF ORIGIN: NGS D132 RESET, 1848
ELEVATION=975.39
1.7 MI. W FROM MANAWA PARK, 1.25 MILES WEST ALONG U.S. HIGHWAY 275 FROM THE MANAWA
PARK AT THE FIRST CURVE IN U.S. HIGHWAY 275 WEST OF MANAWA PARK SCHOOL IN THE
NORTHEAST QUARTER OF THE INTERSECTION OF A DIRT ROAD WHICH LEADS NORTH ALONG THE
EAST EDGE OF INDIAN CREEK RICH, 32.8 FEET EAST OF THE CENTER LINE OF THE DIRT ROAD,
1.71 FEET WEST OF THE EAST END OF THE CHANGING 425' WIDE INTERSECTION OF A ROAD
LEADING TO THE RADIO TRANSMISSION TOWERS OF KOLL, 1.3 FOOT NORTHWEST OF AN IRON FENCE
CORNER POST, 1.8 FOOT SOUTH OF A 4' x 4' REFERENCE POST, SET IN THE TOP OF A CONCRETE
POST WHICH PROJECTS 0.4 FOOT ABOVE THE GROUND AND IS ABOUT 7.0 FEET BELOW THE



VICINITY MAP - NO SCALE

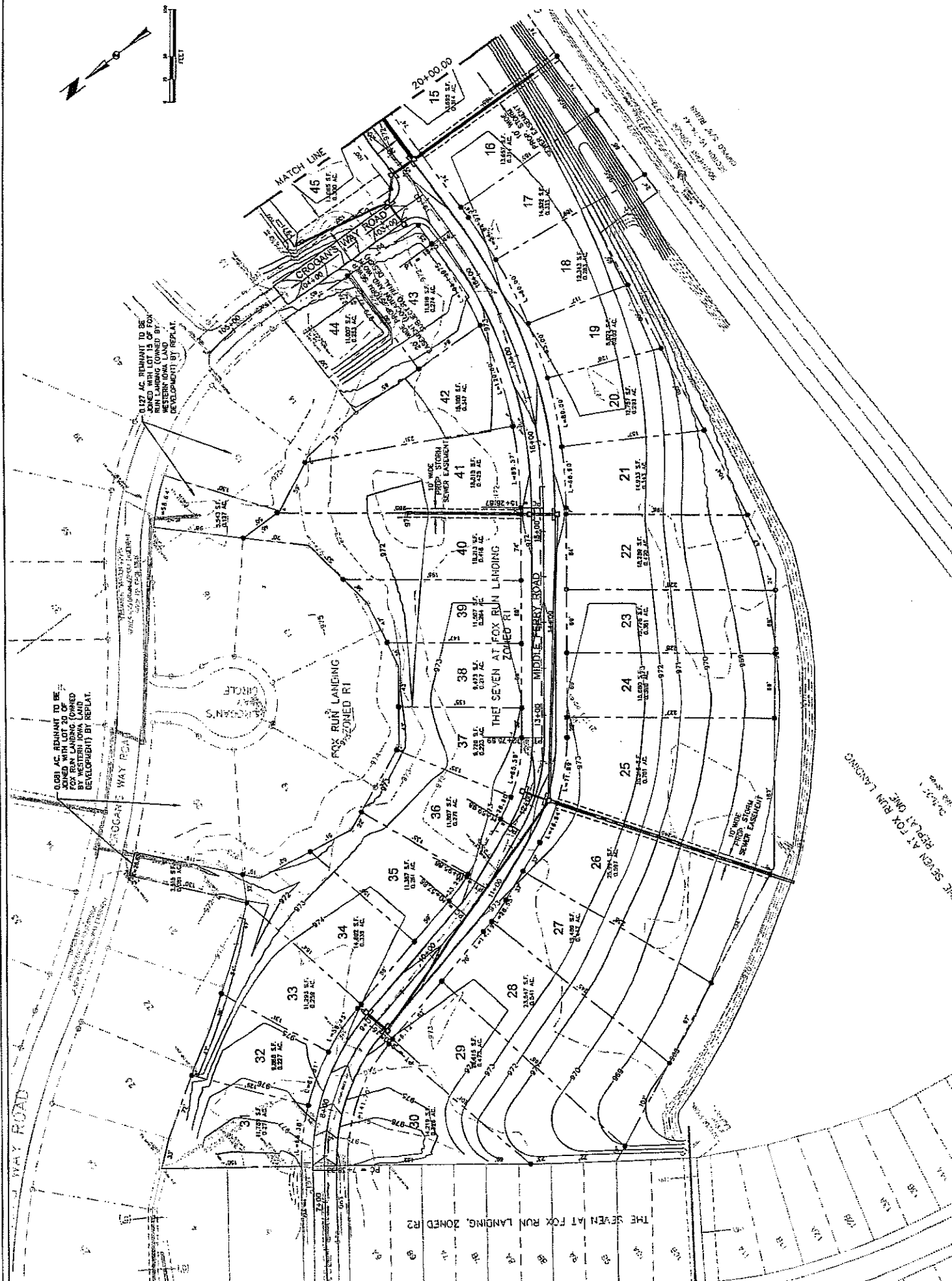
INDEX

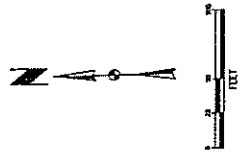
PAGE NO.	DESCRIPTION
A-01	TITLE SHEET
A-02	PRELIMINARY PLAT - WEST HALF
A-03	PRELIMINARY PLAT - EAST HALF
A-04-06	STREET PROFILES

I hereby certify that this engineering document was prepared by me or my direct associate in accordance with the Professional Engineer under the laws of the State of Iowa.



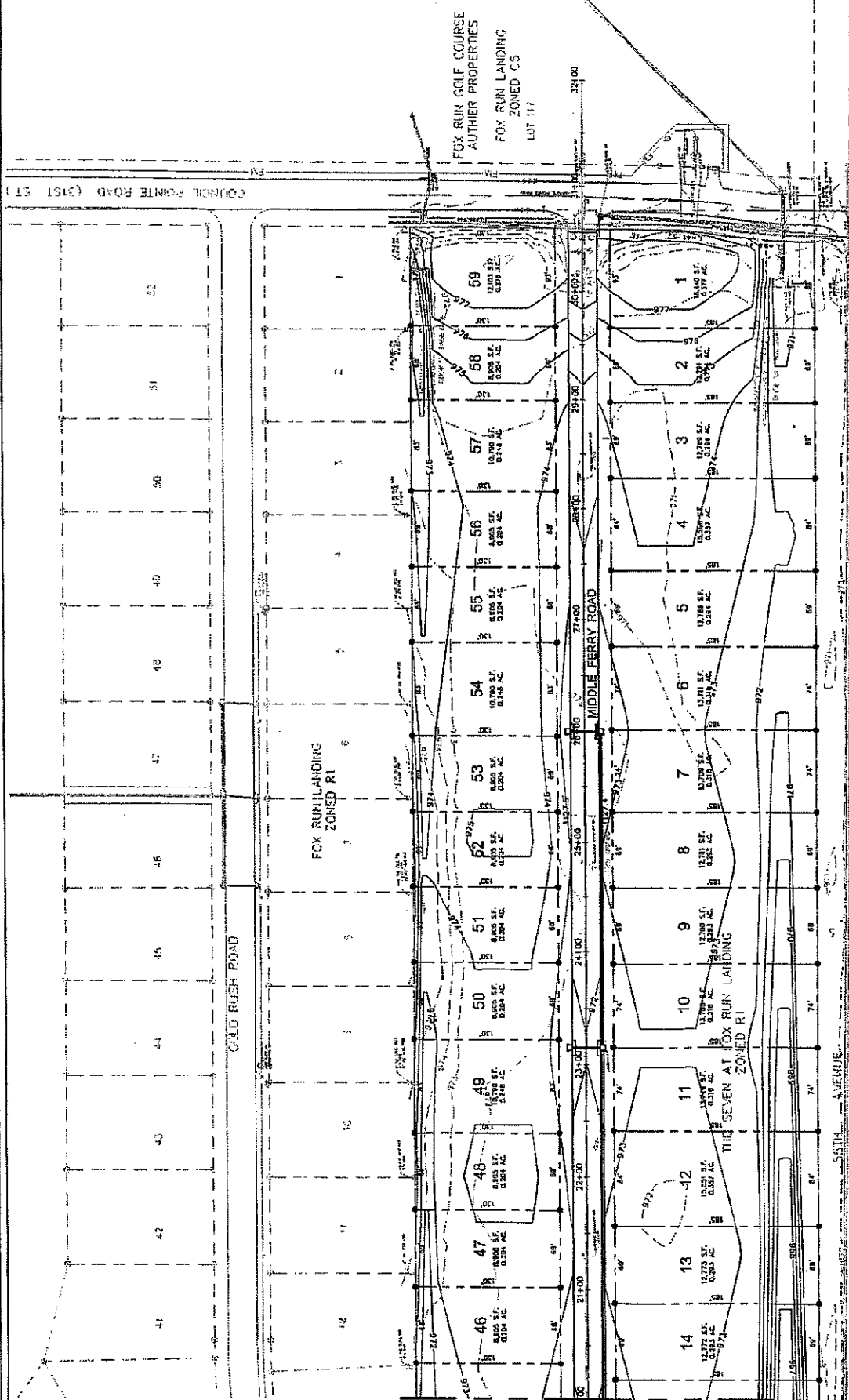
TERRENCE L. SMITH
My license renewal date is December 31, 2008.
Pages on sheets covered by this seal:
SHEET A-01-A-08



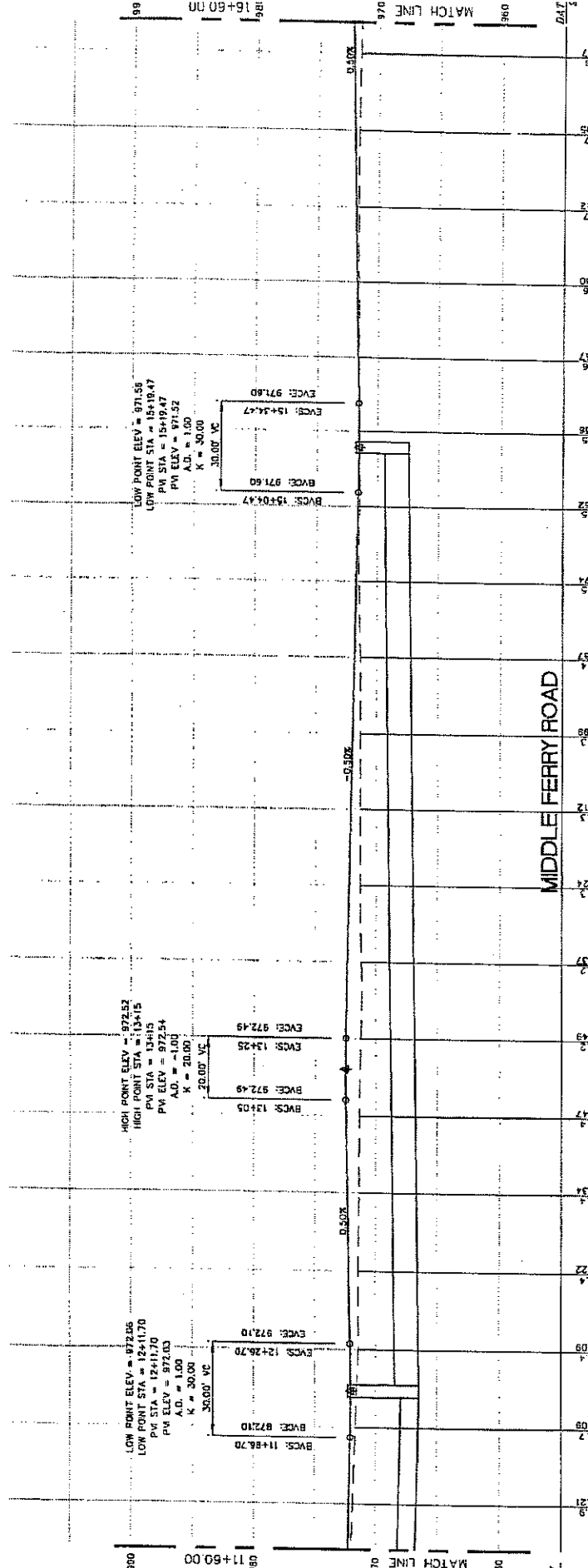
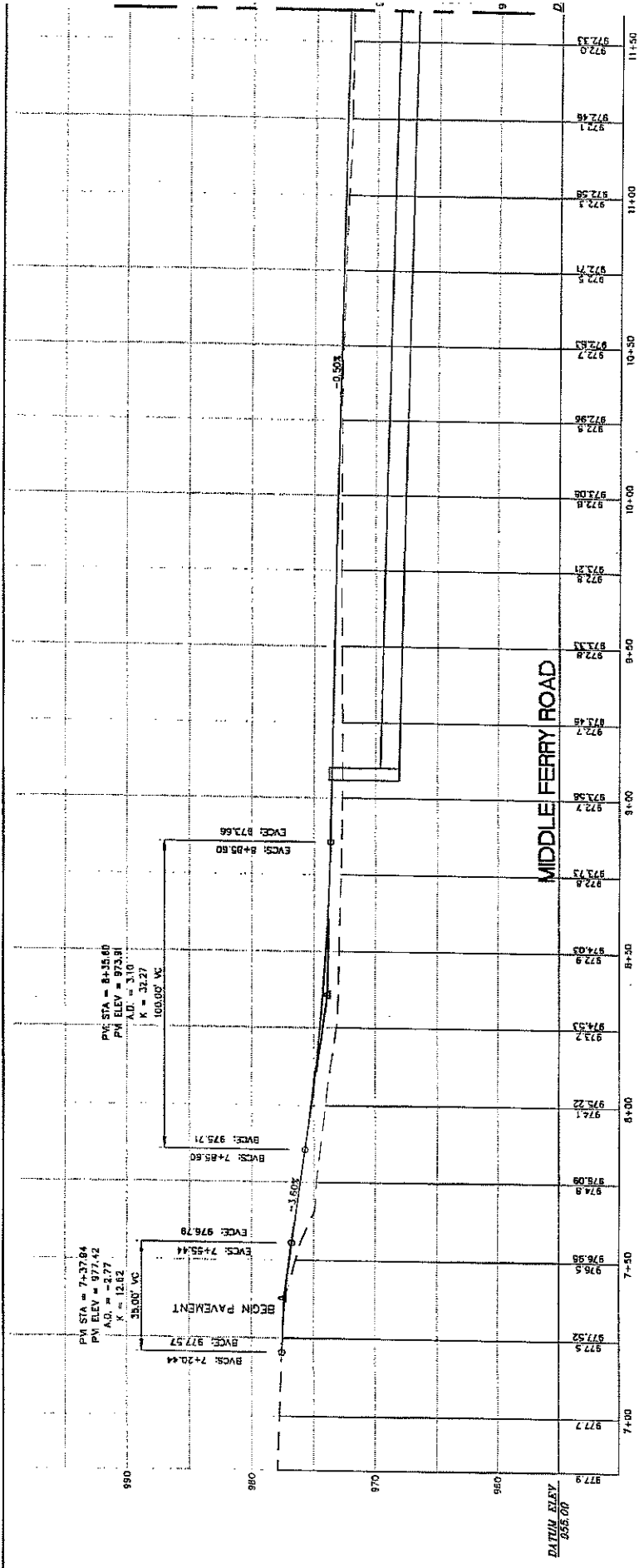


SECTION 15-74-44
3/4" = 500'

FOX RUN GOLF COURSE
AUTHOR PROPERTIES
FOX RUN LANDING
ZONED C5
LOT 117



20+00.00



HIGH POINT ELEV = 972.82
 HIGH POINT STA = 21+32.50
 PM STA = 21+32.50
 PM ELEV = 972.83
 A.D. = -1.00
 K = 20.00

LOW POINT ELEV = 971.95
 LOW POINT STA = 19+43.10
 PM STA = 19+43.10
 PM ELEV = 971.91
 A.D. = -1.00
 K = 30.00

HIGH POINT ELEV = 972.75
 HIGH POINT STA = 17+71.14
 PM STA = 17+71.14
 PM ELEV = 972.78
 A.D. = -1.00
 K = 20.00

LOW POINT ELEV = 971.87
 LOW POINT STA = 23+15
 PM STA = 23+15
 PM ELEV = 971.93
 A.D. = -1.00
 K = 30.00

BVCS: 21+42.50
 EVCS: 972.80
 BVCS: 21+42.50
 EVCS: 972.80

BVCS: 18+30.10
 EVCS: 971.98
 BVCS: 18+30.10
 EVCS: 971.98

BVCS: 17+61.14
 EVCS: 972.73
 BVCS: 17+61.14
 EVCS: 972.73

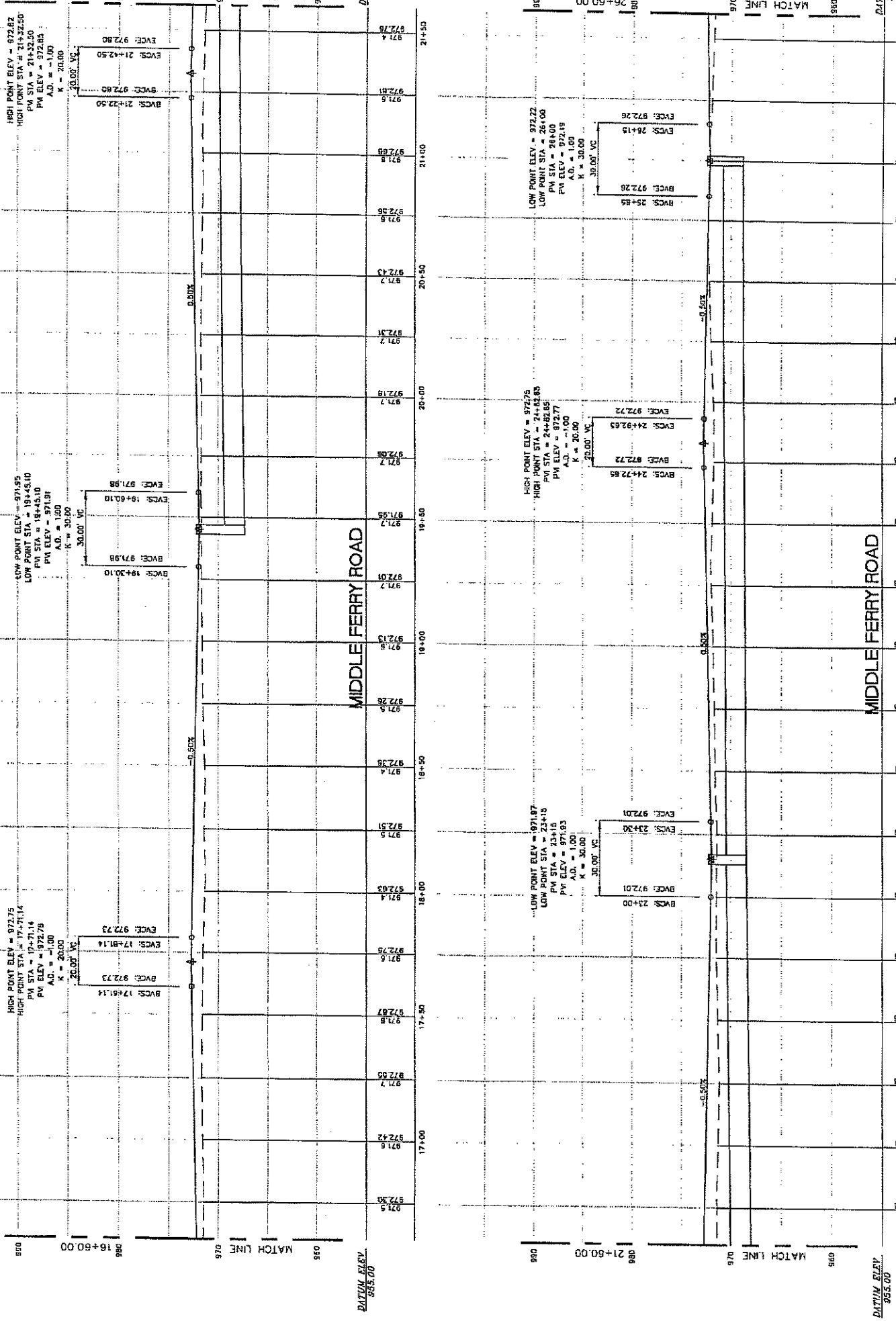
BVCS: 23+00
 EVCS: 972.01
 BVCS: 23+00
 EVCS: 972.01

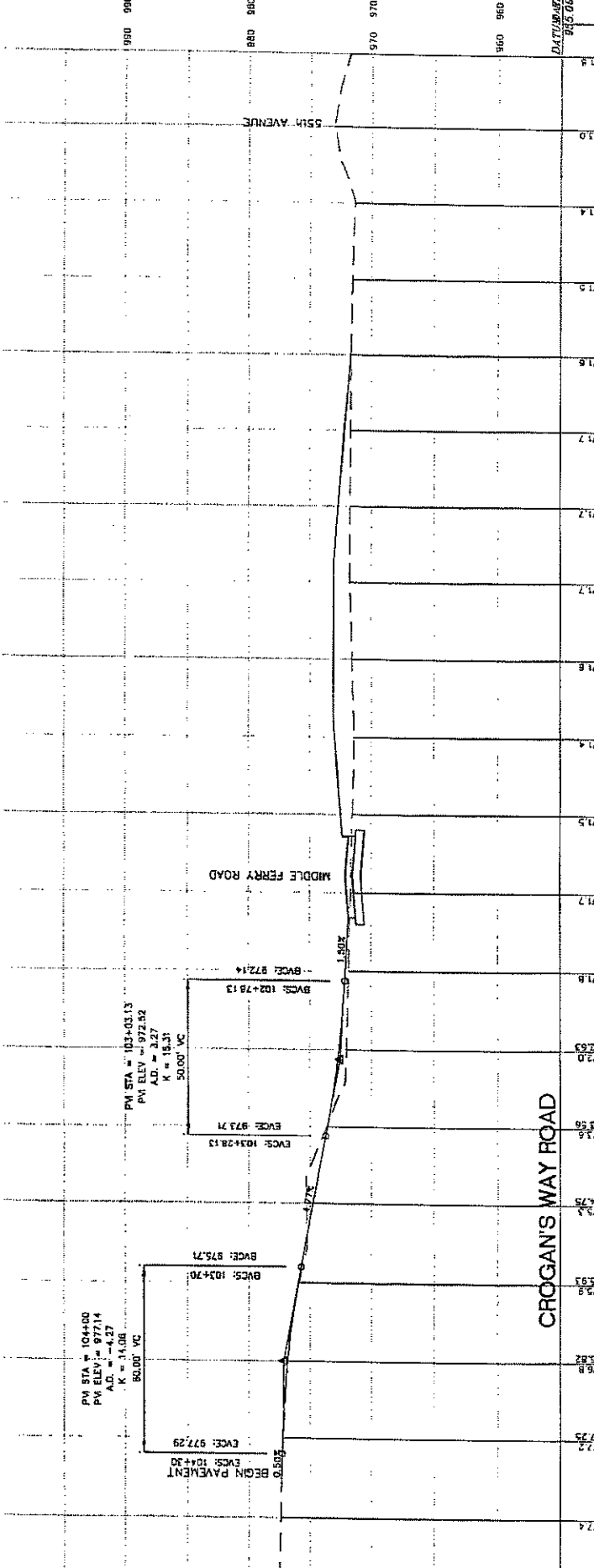
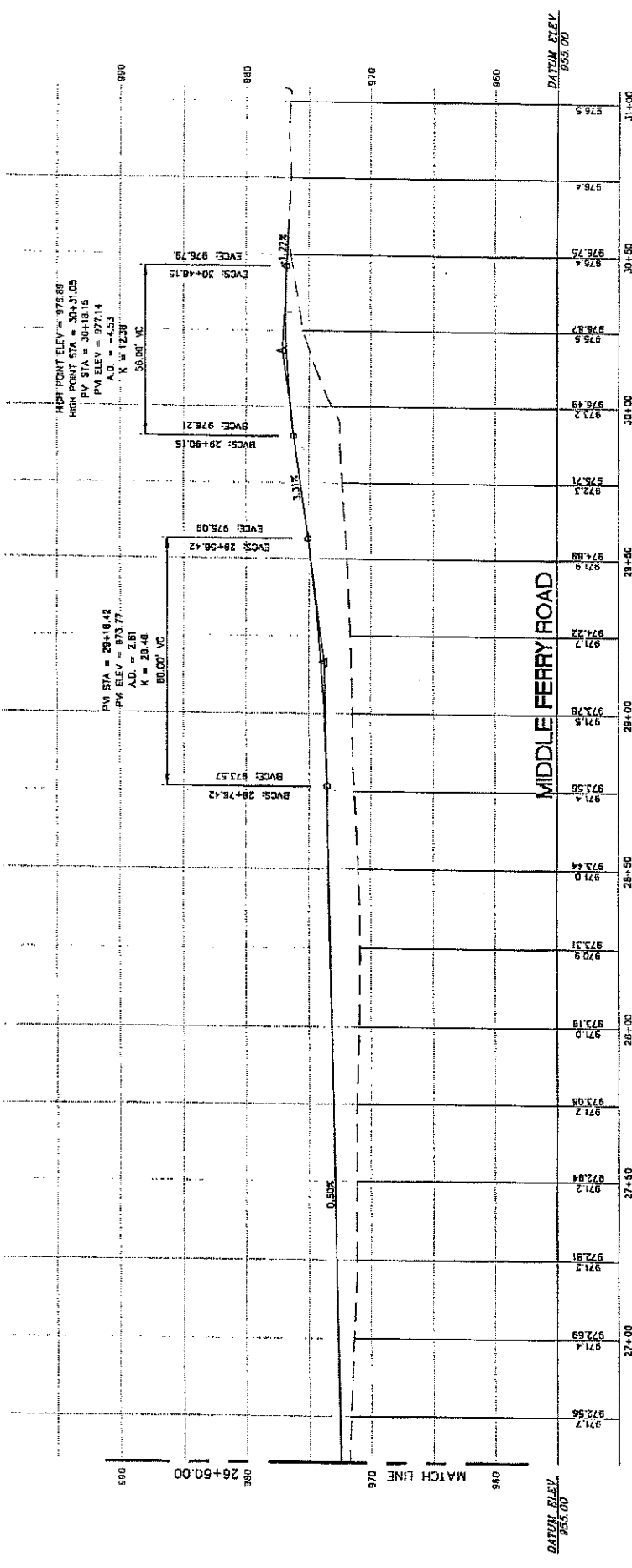
MIDDLE FERRY ROAD

MIDDLE FERRY ROAD

DATUM ELEV.
 955.00

DATUM ELEV.
 955.00



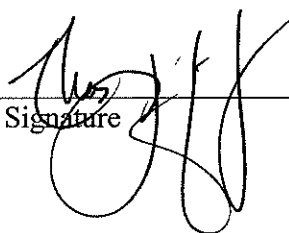


Council Communication

Department: Parks, Recreation and Public Property Department	Ordinance No. Resolution No. <u>08-231</u>	Council Action: <u>July 28, 2008</u>
Case/Project No.		
Applicant: City of Council Bluffs (John Batt)		
Subject/Title For City Council consideration is a resolution authorizing the Mayor to enter into an agreement with the Iowa Department of Transportation for a Transportation Enhancement Grant for the Union Pacific Railroad Museum. The project name is Enhancement of Education about the 20 th & 21 st Centuries Rail Transportation.		
Background/Discussion <ul style="list-style-type: none">• This grant is for the expansion of exhibits on the top floor of the museum focusing on 20th and 21st centuries rail transportation.• The amount of the grant is \$265,000 with the required matching funds of \$238,500. These matching funds have been raised by the Friends of the Union Pacific Railroad Museum and include the \$235,000 used for the first half of the project, another \$125,000 from the Iowa West Foundation and \$125,000 from an anonymous donor. These monies have already been received by the Friends.• Beth Lindquist, Director of the Union Pacific Railroad Museum, and her consultant will oversee the construction and observation of this project.		
Recommendation A resolution has been prepared authorizing the Mayor to enter into an agreement with the Iowa Department of Transportation accepting the Transportation Enhancement grant. I recommend the City Council adopt the resolution.		

Department Head Signature

Mayor Signature



CE



July 17, 2008

TO: Mayor, City Council
City of Council Bluffs

The Friends of the Union Pacific Railroad Museum have received a Transportation Enhancement Grant from the Iowa Department of Transportation. To access the grant amount, the funds must run through a Local Public Agency (LPA). In this case, similar to the DOT grant during initial renovation, the City of Council Bluffs would act as the LPA.

The grant is for the expansion of exhibits on the top floor of the museum focusing on 20th and 21st centuries rail transportation. The first half of the project, "Working on the Railroad," was completed in 2006. This is the second half of the project and will concentrate on passenger travel and train travel in Iowa. The amount of the DOT grant is \$265,000 with the required matching funds of \$238,500. These matching funds have been raised by the Friends and include the \$235,000 used for the first half of the project, another \$125,000 from the Iowa West Foundation and \$125,000 from an anonymous donor. These monies have already been received by the Friends.

The Friends are requesting the City to accept the funds for this project on behalf of the Union Pacific Railroad Museum

Sincerely,

A handwritten signature in cursive script that reads "Beth Lindquist".

Beth Lindquist, Director
Union Pacific Railroad Museum

RESOLUTION 08-231

WHEREAS, the state of Iowa has enacted the IDOT Transportation Enhancement Grant Program; and

WHEREAS, there is a need to develop an exhibit focusing on 20th and 21st centuries rail transportation at the Union Pacific Railroad Museum; and

WHEREAS, the Iowa Department of Transportation has provided an agreement for funding for this project; and

WHEREAS, the City Council of Council Bluffs deems said agreement to be in the best interest of the City of Council Bluffs.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That the Mayor and City Clerk are hereby authorized, empowered, and directed to execute an agreement with the Iowa Department of Transportation for the expansion of exhibits at the Union Pacific Railroad Museum.

ADOPTED
AND
APPROVED July 28, 2008

Thomas P. Hanafan, Mayor

Attest:

Judy Ridgeley, City Clerk

**IOWA DEPARTMENT OF TRANSPORTATION (DOT)
AGREEMENT FOR A
TRANSPORTATION ENHANCEMENT PROGRAM PROJECT**

PROJECT NAME: Enhancement of Education about the 20th & 21st
Centuries Rail Transportation
RECIPIENT: City of Council Bluffs
PROJECT NUMBER: STP-ES-1642(653)-8I-78
IOWA DOT AGREEMENT NO.: 08-STPES-132

This is an agreement between the City of Council Bluffs, hereinafter referred to as RECIPIENT and the Iowa Department of Transportation, hereinafter referred to as the DEPARTMENT. Iowa Code Sections 306A.7 and 307.44 provide for the RECIPIENT and the DEPARTMENT to enter into agreements with each other for the purpose of financing transportation improvement projects in Iowa with Federal funds. The RECIPIENT proposes a Transportation Enhancement (TE) project for funding under Sec. 133(b)(8) and Sec. 101(a)(35) of Title 23, United States Code.

The Transportation Equity Act for the 21st Century (TEA-21), enacted in 1998, reestablished the Surface Transportation Program (STP). Federal regulations provide that STP funds for the TE program are to be administered by the DEPARTMENT.

The Office of Management and Budget (OMB) Circular A-133 requires the RECIPIENT to report the Catalog of Federal Domestic Assistance (CFDA) number and title on all Federal-Aid projects. The RECIPIENT will use CFDA #20.205 and title, "Highway Planning and Construction" for this project. This information should be reported in "The Schedule of Expenditures of Federal Awards".

Pursuant to the terms of this agreement, applicable statutes, administrative rules, and programming by the DEPARTMENT and the MAPA Rural Transportation Planning Affiliation, the DEPARTMENT agrees to provide funding to the RECIPIENT for the authorized and approved costs for eligible items associated with the development of the Enhancement of Education about 20th & 21st Centuries Rail Transportation TE project.

In consideration of the foregoing and the mutual promises contained in this agreement, the parties agree as follows:

1. The RECIPIENT shall be the lead organization for carrying out the provisions of this agreement.

2. All notices required under this agreement shall be made in writing to the DEPARTMENT's and/or the RECIPIENT's contact person. The DEPARTMENT's contact person shall be Nancy Anania, Transportation Enhancements Program Manager, Office of Systems Planning, 800 Lincoln Way, Ames, Iowa 50010; telephone 515-239-1621; e-mail nancy.anania@dot.iowa.gov . The RECIPIENT'S contact person shall be Ron Hopp, Director of Parks, Recreation and Public Property, 209 Pearl Street, Council Bluffs, IA 51503; telephone 712-328-4650; e-mail rhopp@cbparksandrec.org .
3. The RECIPIENT shall be responsible for the development and completion of the following described project:

This project allows the museum to expand the exhibits about passenger and freight transportation in the 20th and 21st century. The estimated total cost is \$503,500.

4. Eligible project costs for the project described in Section 3 of this agreement, which are incurred after the date of Federal Highway Administration (FHWA) authorization shall be paid as follows:

TE Funds	\$265,000.00
Local Contribution	238,500.00
Project Total	<u>\$503,500.00</u>

5. The local contribution stated above may include cash or non-cash contributions to the project. The RECIPIENT shall certify to the DEPARTMENT the value of any non-cash contribution to the project prior to it being incurred. For right of way contributions, the RECIPIENT shall submit an appraisal from a qualified independent appraiser. The DEPARTMENT reserves the right to review the RECIPIENT'S certificate of value and has sole authority to determine the value of the RECIPIENT'S non-cash contribution for the purposes of this agreement. If, as a result of the DEPARTMENT'S determination, the RECIPIENT'S total cash and non-cash contribution is below that stated in the terms of this agreement, the RECIPIENT shall increase its cash contribution in order to complete the RECIPIENT'S local contribution, or the grant and/or loan amount associated with this project shall be reduced accordingly.
6. The portion of total project costs paid by Transportation Enhancements Program grant shall not exceed the amount stated above (\$265,000.00) or 80 percent of the total cost of the eligible items, whichever is the smaller amount. Cost overruns shall be paid solely by the applicant.

7. Project activities or costs eligible for funding include only those items set out in Exhibit A, which are attached hereto and by this reference incorporated into this agreement, and which are necessary to complete the project as described in Section 3.
8. Activities or costs ineligible for funding include, but are not limited to, those items set out in Exhibit B, which is attached hereto and by this reference incorporated into this agreement.
9. Notwithstanding any other provisions of this contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the State of Iowa to appropriate funds or discontinuance or material alteration of the program for which funds were provided, the DEPARTMENT shall have the right to terminate this contract without penalty by giving not less than ninety (90) days written notice.
10. The DEPARTMENT reserves the right to delay reimbursement of funds to the RECIPIENT if necessary to maintain a positive cash flow. If such a delay is necessary and lasts more than five (5) working days, the DEPARTMENT shall so notify the RECIPIENT in writing and shall give the RECIPIENT an estimate of when reimbursement might be expected. The DEPARTMENT shall establish a system to equitably make reimbursements to all RECIPIENTS so affected.
11. The RECIPIENT shall submit to the DEPARTMENT, no later than thirty (30) days subsequent to the RECIPIENT'S signature date on this agreement, a timetable outlining the project schedule. Failure to do so by the RECIPIENT may be considered a default under this agreement.
12. The RECIPIENT must have let the contract or have construction started within two (2) years of the date this project is approved by the DEPARTMENT. Approval was granted by the DEPARTMENT on February 7 2007. If the RECIPIENT does not do this, they will be in default for which the DEPARTMENT can revoke funding commitments. This agreement may be extended for periods of up to six (6) months upon receipt of a written request from the RECIPIENT at least sixty (60) days prior to the deadline.
13. This agreement will become null and void if the project described in Section 3 drops out of the MAPA Rural Transportation Planning Affiliation's current Transportation Improvement Program (TIP) or the DEPARTMENT'S approved current Statewide Transportation Improvement Program (STIP) prior to authorization of Federal funds.
14. If any part of this agreement is found to be void and unenforceable, the remaining provisions of this agreement shall remain in effect.

15. It is the intent of both parties that no third party beneficiaries be created by this agreement.
16. This agreement shall be executed and delivered in two (2) or more copies, each of which so executed and delivered shall be deemed to be an original and shall constitute but one and the same instrument.
17. This agreement is not assignable without the prior written consent of the DEPARTMENT.
18. If the project described in Section 3 of this agreement crosses a DOT primary road, then:
 - A. The RECIPIENT shall convey title to the State of Iowa, by quit claim deed, to any right of way necessary for the primary road crossing, all at no cost to the DEPARTMENT. However, the DEPARTMENT shall prepare detailed legal descriptions and plats. The general configuration of the right of way to be conveyed shall be agreed to by the RECIPIENT and the DEPARTMENT prior to the survey.
 - B. The RECIPIENT shall submit six (6) copies of plans for all primary road system crossings to the DEPARTMENT'S contact person for review and approval by the District Offices for necessary permits and the Offices of Design and Maintenance with regard to crossing design and location, signing, fencing, safety, maintenance, compliance with access control policy, etc. Said approval shall be obtained before the RECIPIENT proceeds with the construction of any primary road system crossing.
 - C. The use of primary highway right of way for this project's purpose shall be subject to any rights enjoyed by any existing utility lines presently within the right of way. If excavation of a utility line over which this project has been placed is necessary for any reason, the utility shall be responsible for proper backfilling of said excavation to ground level. The RECIPIENT shall be responsible for any necessary resurfacing or restoration.
 - D. The use of primary highway right of way for this project's purpose shall be subject to any future plans for reconstruction, improvement, maintenance, and/or relocation of the highway by the DEPARTMENT. Any relocation of this project necessary because of said plans shall be at the expense of the RECIPIENT, all at no cost to the DEPARTMENT.
19. The RECIPIENT shall acquire the project right of way, whether by lease, easement or fee title and shall provide relocation assistance benefits and payments in accordance with the procedures set forth in the

DEPARTMENT'S Right of Way Manual. The RECIPIENT shall contact the DEPARTMENT for assistance, as necessary, to ensure compliance with the required procedures, even if no federal funds in the right of way purchase are involved. The RECIPIENT will need to get environmental concurrence before acquiring any needed right of way. With prior approval, hardship and protective buying is possible. If the RECIPIENT requests Federal-aid participation for right of way acquisition, the RECIPIENT will need to get environmental concurrence and FHWA authorization before purchasing any needed right of way.

20. The RECIPIENT shall comply with the Policy for Accommodating Utilities on City and County Federal-aid Highways Right of Way and the Policy for Accommodating Utilities on the Primary Road System when on the DEPARTMENT'S Right of Way. Certain utility relocation, alteration, adjustment, or removal costs to the RECIPIENT for the project may be eligible for Federal-aid reimbursement in accordance with the FHWA rules applicable to the type of utility involved and Iowa Code Chapter 306A.

21. The RECIPIENT shall be responsible for obtaining any permits, such as the Right to Occupy and/or Perform Work Within the Right of Way, Permit of Access, Utility Accommodation, Right to Install and Maintain Traffic Control Devices, and/or other construction permits required for the project prior to the start of construction.

In addition, the Recipient shall certify to the DEPARTMENT'S contact person that all known required environmental permits have been received and that all environmental regulations have been complied with before funds are reimbursed or credited.

Neither the approval of the project application for funding nor the signing of this agreement shall be construed as approval of any required permit from the DEPARTMENT.

22. Traffic control devices, signing, or pavement markings installed within the limits of this project shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways" per 76 Iowa Administrative Code (IAC) Chapter 130. The safety of the general public shall be assured through the use of proper protective measures and devices such as fences, barricades, signs, flood lighting, and warning lights as necessary.

23. In the event that right of way is required for the project, said right of way will be acquired in accordance with 761 IAC Chapter 111, Real Property Acquisition and Relocation Assistance, and the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

24. The project plans, specifications and cost estimate shall be prepared and certified by a professional engineer, architect and/or landscape architect, whichever applies, licensed to practice in the State of Iowa. The RECIPIENT shall submit the plans, specifications and other agreement documents to the DEPARTMENT for review. This submittal may be in divisions and in the order of preference as determined by the RECIPIENT. However, the plans, specifications and other agreement documents for each division must be submitted at least thirty (30) days prior to the project letting of each division. The DEPARTMENT shall review said submittal(s) recognizing the RECIPIENT'S development schedule and shall, after satisfactory review, authorize in writing the RECIPIENT to proceed with implementation of the project. The work on this project shall be in accordance with the survey, plans, and specifications on file. Any modification of these plans and specifications must be approved by the DEPARTMENT prior to the modification being put into effect.
25. The RECIPIENT shall be responsible for the daily inspection of the project. For projects let to contract, the RECIPIENT shall compile a daily log of materials and quantities. For projects constructed with local forces, the RECIPIENT shall compile a daily log of materials, equipment and labor on the project. The DEPARTMENT reserves the right to inspect project activities and to audit claims for funding reimbursement. The purpose of the inspection or audit is to determine substantial compliance with the terms of this agreement.
26. The RECIPIENT shall maintain all books, documents, papers, accounting records, reports and other evidence pertaining to costs incurred for the project. The RECIPIENT shall make such materials available at all reasonable times during the construction period and for three (3) years from the date of final reimbursement, for inspection by the DEPARTMENT, FHWA or any authorized representatives of the Federal government. Copies of said materials shall be furnished by the RECIPIENT if requested.
27. The RECIPIENT may submit to the DEPARTMENT periodic itemized claims for reimbursement for eligible project costs. Reimbursement claims shall include certification that all eligible project costs for which reimbursement is requested have been completed in substantial compliance with the terms of this agreement.
28. The DEPARTMENT will reimburse the RECIPIENT for properly documented and certified claims for eligible project costs, less a withholding of 5% of the Federal and / or State share of construction costs. Reimbursement will be made either by State warrant or by crediting other accounts from which payment was initially made. If, upon final audit or review, the DEPARTMENT determines that the RECIPIENT has been overpaid, the RECIPIENT shall reimburse the overpaid amount to the

DEPARTMENT. After the final audit or review is complete and after the RECIPIENT has provided all required paperwork, the DEPARTMENT will release the Federal or State funds withheld.

29. Upon completion of the project described in this agreement, a professional engineer, architect and/or landscape architect, whichever applies, licensed to practice in the State of Iowa shall certify in writing to the DEPARTMENT that the project activities were completed in substantial compliance with the plans and specifications set out in this agreement.

In addition, prior to final reimbursement for the project, the RECIPIENT shall furnish three (3) sets of "as-built" plans of the project to the DEPARTMENT.

Final reimbursement of funds, including retainage, shall be made only after the DEPARTMENT accepts the project as complete.

30. If, in the opinion of the RECIPIENT, the specific provisions of this agreement requiring the services of a professional engineer, architect and/or landscape architect, whichever applies, licensed to practice in the State of Iowa prove to be burdensome to the RECIPIENT or otherwise not in the public interest, and if the RECIPIENT decides that the provisions of this agreement can be otherwise complied with without endangering public safety, the RECIPIENT may request that said provisions be waived on all or specific parts of the project identified by the RECIPIENT. Such request shall be made in writing to the DEPARTMENT'S contact person who shall, after consultation with other DEPARTMENT staff as necessary, make the final determination concerning said waiver. If said waiver is granted, all provisions of this agreement requiring the services of a professional engineer, architect and/or landscape architect, whichever applies, licensed to practice in the State of Iowa shall be performed by the RECIPIENT'S contact person or designee.
31. The RECIPIENT agrees to indemnify, defend and hold the DEPARTMENT harmless from any action or liability arising out of the design, construction, maintenance, placement of traffic control devices, inspection or use of this project. This agreement to indemnify, defend and hold harmless applies to all aspects of the DEPARTMENT'S application review and approval process, plan and construction reviews and funding participation.
32. This agreement may be declared to be in default by the DEPARTMENT if the DEPARTMENT determines that the RECIPIENT'S application for funding contained inaccuracies, omissions, errors or misrepresentations, or if the DEPARTMENT determines that the project is not developed as described in the application.

33. If the RECIPIENT fails to perform any obligation under this agreement, the DEPARTMENT shall have the right, after first giving thirty (30) days written notice to the RECIPIENT by certified mail return receipt requested, to declare any part or all of this agreement in default. The RECIPIENT shall have thirty (30) days from the date of the mailing of the notice to cure the default. If the RECIPIENT cures the default, the RECIPIENT shall notify the DEPARTMENT no later than five (5) days after the cure or before the end of said thirty (30) day period given to cure the default. Within ten (10) working days of receipt of the RECIPIENT'S notice of cure, the DEPARTMENT shall issue either a notice of acceptance of cure or a notice of continued default.
34. In the event a default is not cured, the DEPARTMENT may revoke funding commitments and/or seek repayment of funds granted by this agreement. By signing this agreement the RECIPIENT agrees to repay said funding if they are found to be in default. Repayment methods must be approved by the Transportation Commission and may include cash repayment, installment repayments with negotiable interest rates, charges against the RECIPIENT'S share of road use tax funds, or other methods as approved by the Commission.
35. In case of a dispute concerning the terms of this agreement, the parties shall submit the matter to arbitration pursuant to IAC 679A (2003). Either party has the right to submit the matter to arbitration after ten (10) days notice to the other party of their intent to seek arbitration. The written notice must include a precise statement of the disputed question. The DEPARTMENT and the RECIPIENT agree to be bound by the decision of the appointed arbitrator. Neither party may seek any remedy with the state or federal courts absent exhaustion of the provisions of this section for arbitration.
36. The RECIPIENT shall maintain, or cause to be maintained for the intended public use, the improvement for twenty (20) years from the completion date in a manner acceptable to the DEPARTMENT. Failure to comply with this provision may be considered a default of this agreement.
37. The RECIPIENT shall comply with all provisions of the equal employment opportunity requirements prohibiting discrimination and requiring affirmative action to assure equal employment opportunity as required by the IAC 216 (2003). No person shall, on the grounds of age, race, creed, sex, color, national origin, religion, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the RECIPIENT receives state funds from the DEPARTMENT.
38. The RECIPIENT shall conduct the project development and implementation in compliance with applicable laws, ordinances and

administrative rules. For portions of the project let to bid, the RECIPIENT shall advertise for bidders, make a good faith effort to get at least three (3) bidders and hold a public letting for the project work. Prior to awarding the contract, the RECIPIENT shall provide the DEPARTMENT file copies of project letting documents within five (5) working days after the letting. The RECIPIENT must wait for DEPARTMENT concurrence before making the final award.

Additionally, for projects where federal highway funds or federal non-highway funds are used to match the project, the RECIPIENT shall also follow all administrative and contracting procedures, which would normally be used when such funds are used. The RECIPIENT shall comply with all requirements for use of said funds as outlined in Exhibit D.

39. The RECIPIENT shall include in their Notice to Bidders that Sales Tax Exemption Certificates will be issued, as provided for by Iowa Code section 423.3, subsection 80. The RECIPIENT shall be responsible for obtaining the sales tax exemption certificates through the Iowa Department of Revenue and Finance. The RECIPIENT shall issue these certificates to the successful bidder and any subcontractors to enable them to purchase qualifying materials for the project free of sales tax.
40. This agreement, as set forth in items 1 through 40 herein, including referenced exhibits, constitutes the entire agreement between the DEPARTMENT and the RECIPIENT concerning this project. Representations made before the signing of this agreement are not binding, and neither party has relied upon conflicting representations in entering into this agreement. Any change or alteration to the terms of this agreement must be made in the form of an addendum to this agreement. Said addendum shall become effective only upon written approval of the DEPARTMENT and the RECIPIENT.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement Number 08-STPES-132 as of the date shown opposite its signature below.

RECIPIENT: City of Council Bluffs

By _____ Date _____, 2008

Title: _____

I, _____, certify that I am the City Clerk and that

_____, who signed said

Agreement for and on behalf of the City of Council Bluffs

was duly authorized to execute the same by virtue of a formal Resolution duly

passed and adopted by the City on this ____ day of _____ 2008,

Signed _____ Date _____ 2008

City Clerk of Council Bluffs, Iowa

IOWA DEPARTMENT OF TRANSPORTATION
Planning, Programming and Modal Division
800 Lincoln Way, Ames, Iowa 50010

By _____ Date _____, 2008

Stuart P. Anderson
Director
Office of Systems Planning

EXHIBIT A

Eligible Project Costs for Usage of Transportation Enhancement Funds

Project activities or costs eligible for Transportation Enhancements funding assistance include:

- Land acquisition, including appraisal and negotiation. Land may be acquired by lease, easement or fee title.
- Construction of the project.
- Design engineering and construction inspection directly associated with the project.

EXHIBIT B

Ineligible Project Costs for Usage of Transportation Enhancement Funds

Project activities or costs not eligible for TE funding assistance include:

- Any and all costs incurred prior to the execution of an agreement and written receipt of federal concurrence in environmental clearance for a project.
- Routine maintenance of the project.
- Overhead and operating costs - such as auditing, legal and administrative costs - associated with the project.
- Expenses associated with the preparation and submission of a project application.
- Utility costs not necessitated by the project.
- Purchase of office furnishings or equipment, construction equipment or personal property.

EXHIBIT C

Standard Provisions for Use of Federal-Aid

1. Since this project is to be financed in part with local and Federal funds, the Recipient shall take the necessary actions to comply with applicable State and Federal laws and regulations.

In all programs and activities of Federal-aid recipients, sub-recipients and contractors, no person in the United States shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination on the grounds of race, color, national origin, sex, age, or handicap/disability. While no specific commitment or numeric goal has been established for this project, the Recipient is encouraged, in accordance with Title 49, Code of Federal Regulations - Part 26 (49 CFR 26), to make a good faith effort to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts.

2. The Recipient must receive notice of FHWA authorization from the DOT before beginning any work for which federal-aid reimbursement will be requested. The cost of work occurring prior to securing FHWA authorization will not be reimbursed with federal-aid funds. The Recipient must contact the DOT to obtain the procedures necessary to secure FHWA authorization.
3. The Recipient shall take the appropriate actions and prepare the necessary documents to fulfill the FHWA requirements for project environmental studies including historical/cultural reviews and location/design approval. The Recipient shall complete any mitigation agreed upon in the FHWA approval document. If farmland is to be acquired, whether for use as project right of way or permanent easement, the Recipient shall submit the U.S. Department of Agriculture Farmland Conversion Impact Rating form when required, to the U.S. Natural Resources Conservation Service (NRCS).
4. The Recipient shall certify to the DOT's contact person that all known required environmental permits have been received and that all environmental regulations have been complied with before funds are reimbursed or credited.
5. The Recipient shall obtain agreements, as needed, from railroad and utility companies and shall obtain project permits and approvals, when necessary, from the Iowa Department of Cultural Affairs (State Historical Society of Iowa; State Historic Preservation Officer), Iowa Department of Natural Resources, U.S. Coast Guard, U.S. Army Corps of Engineers and the DOT, etc.

6. General requirements and covenants (Division 11) of the DOT's standard specifications shall apply to all projects let at the DOT.
7. The project plans, specifications and project cost estimate (PS&E) shall be prepared and certified by a professional engineer licensed to practice in the State of Iowa. The Recipient shall submit the plans, specifications and other contract documents to the DOT for review and authorization to let the project.
8. The project shall be constructed under the DOT's Standard Specifications and applicable special provisions. Prior to their use in the PS&E, specifications developed by the Recipient for individual construction items shall be approved by the DOT.
9. The Recipient shall comply with the procedures and responsibilities for materials testing and construction inspection according to the DOT's Instructional Memorandum (I.M.'s). The DOT will bill the Recipient for testing services according to its normal policy.
10. If Federal-aid is requested for in-house engineering services, the Recipient will follow the procedure outlined by the DOT. The Recipient, desiring to claim indirect costs under Federal awards, must prepare an indirect cost rate proposal and related documentation in accordance with the requirements of the Office of Management and Budget (OMB) Circular A-87 - Cost Principles for State, Local, and Indian Tribal Governments. Reimbursement eligibility requires an indirect cost rate proposal to be certified by the governmental unit designated cognizant agency or the Federal agency providing the largest amount of Federal funds to the governmental unit.
11. If Federal-aid is requested for preliminary and/or construction engineering costs, the Recipient will select a consultant(s) in accordance with the DOT's consultant selection process.
12. The Recipient and the Consultant shall prepare a consultant contract for engineering services in accordance with Title 23, Code of Federal Regulations, Part 172 - Administration of Negotiated Contracts (23 CFR 172). This is required only if the Recipient uses federal funds for engineering services.
13. After the contents of the consultant contract have been mutually approved, the Recipient shall execute the contract and forward the same to the DOT for authorization only if federal funds are used for engineering services.
14. If preliminary engineering is federally funded, if the "do nothing" alternate is not selected, and if right of way acquisition for or actual construction of

the project is not started by the close of the tenth fiscal year following the fiscal year in which the Federal-aid Project Agreement is executed, the Recipient will repay to the DOT an amount equal to the amount of federal funds made available for such engineering.

15. The Recipient shall forward a Federal-aid Project Development Certification and final PS&E to the DOT. Following FHWA's authorization, the DOT will advertise the project for letting and furnish the Recipient with a sample letting package. As a condition for the DOT to let the package, the Recipient agrees that the Recipient has the financial resources to proceed with the project if bids submitted are 110% of the project cost estimate or less. If the Recipient is a city, the Recipient shall comply with the public hearing requirements of the Iowa Code Section 384.102.
16. Procurement procedures shall be as follows unless some other method is considered to be cost effective (such as the use of Recipient local forces), is proposed by the Recipient, and is approved by the DOT.
 - A. Procurement by **small purchase procedures**. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more (in aggregate) than \$25,000 for cities and \$50,000 for counties. If small purchase procedures are used, price or rate quotations will be obtained from an adequate number of qualified sources.
 - B. Procurement by **sealed bids** (formal advertising). Bids are publicly solicited and a firm fixed-price (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.
 - C. Procurement by **competitive proposals**. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and with a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the used of sealed bids.
 - D. Procurement by **non-competitive proposals** is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by non-competitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the circumstances noted in

Title 49 Code of Federal Regulations - Part 18.36
Procurement.

The Recipient shall notify the DOT of the procurement method it intends to use. If procurement method "C" or "D" above is selected, the Recipient shall include justification for its selection and obtain approval from the DOT.

17. For contracts let to sealed bid, the letting shall be conducted by the DOT's Office of Contracts unless specifically requested and approved otherwise by the parties hereto.
18. If portions of the project are let to sealed bid by the Recipient, the Recipient shall advertise for bidders five (5) days before the letting, make a good faith effort to get at least three (3) bidders, hold a public letting and award contracts for the project work. DOT concurrence in the award must be obtained prior to the award. The Recipient shall provide the DOT file copies of project letting documents within five (5) days after the letting. If the Recipient is not a political subdivision of the State of Iowa, the Recipient shall comply with the applicable laws, administrative rules and procedures for public purchasing and contracting as applicable to political subdivisions of the State of Iowa.
19. When let by the DOT, the DOT will prepare an Iowa DOT Staff Action for concurrence to award the contract. The DOT will mail three (3) originals of the unexecuted contract(s) to the Recipient.
20. The Recipient shall take action to award the contract or reject all bids. Following award of the contract and signature by the lowest responsive bidder, the Recipient shall forward to the DOT two (2) copies of the fully executed contract, two (2) copies of the performance bond and two (2) copies of the certificate of insurance.
21. If Federal-aid is requested for force account construction, the Recipient will follow the procedure outlined by the DOT.
22. The Recipient shall assure compliance with Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and Title 49 Code of Federal Regulations - Parts 660 and 661 regarding "Buy America" provisions on the procurement of foreign products and materials.
23. The Recipient shall assure that all contracts entered in furtherance of this project shall contain the following provisions:

- a. Contain notice of awarding agency requirements and regulations pertaining to reporting.
- b. Contain a provision allowing access by the DOT, the Federal Highway Administration, the Comptroller General of the United States, or any of their duly authorized representatives to any records of the contractor which are directly pertinent to that specific contract for the purpose making audit, examination, excerpts and transcriptions.
- c. Contain a provision requiring retention of all required records for three years after the contracting agency makes final payments and all other pending matters are closed.
- d. Contain mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L.94-163, 89 Stat. 871).
- e. All contracts for construction or repair shall require compliance with the Copeland "Anti-Kickback" Act (18 U.S.C.874) as supplemented in Department of Labor regulations (29 CFR part 3).If the project is within a Federal-aid highway right of way and is in excess of \$2,000, the contract shall require compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5).
- f. Construction contracts in excess of \$2,000 and other contracts in excess of \$2,500 which involve the employment of mechanics or laborers, shall require compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 CFR part 5).
- g. If the contract is for more than \$10,000 it shall provide for termination for cause and for convenience by the contracting agency, including the manner by which it will be affected and the basis for settlement.
- h. Construction contracts in excess of \$10,000 shall require compliance with Executive Order 11246 as of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- i. If the contract is for more than \$100,000 it shall contain administrative contractual or legal remedies in instances where contractors violate

or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

It also requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR part 15).

24. The DOT will prepare the Federal-aid Project Agreement and submit it for FHWA approval and obligation of Federal-aid funds.
25. If the project right of way is federally funded and if the actual construction is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the Federal-aid project agreement is executed, the Recipient will repay the sum or sums of federal funds in the right of way to the DOT.
26. If this agreement is to fund the Historical Preservation of a structure, the Recipient shall preserve the architectural, historical and cultural integrity of the structure by maintaining and repairing the property in compliance with "The Secretary of the Interior's Standards for Rehabilitating Historical Buildings". No alterations shall be made to the existing structure without first obtaining the written consent of the State Historical Society of Iowa (State Historic Preservation Officer).
27. If the Recipient, within the next twenty (20) years after project completion, decides to sell the structure to a private party or it is now under private ownership, the Recipient shall:
 - A. Execute a recordable document for preserving the historical and architectural integrity for twenty (20) years from the date of receipt of public funds; or
 - B. Repay the State of Iowa all the funds received by the Recipient.
28. If the Recipient elects to levy special assessments as a means of raising the local share of the total project costs, the Recipient shall reimburse the DOT in the amount that payments of Federal-aid and collections of special assessments, excluding interest and penalties, exceed the total cost of the public improvement as established by the provisions of Iowa Code Chapter 384. The Recipient agrees that at such time as its collections (exclusive of interest and penalties which shall be retained by the Recipient) from special assessments levied for this project exceed the local share in excess of the total project costs (including interest and penalties associated with the amount of excess) within sixty (60) days of the receipt of any special assessment payments. The Recipient shall notify the DOT when any lands specially assessed no longer qualify for an

agricultural deferment of the special assessment, and notify the DOT when all special assessments have been satisfied. The DOT shall credit reimbursement billings to the FHWA in the amount of refunds received from the Recipient.